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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 216

THE PEOPLE OF PUERTO RICO,
ON BEHALF OF THE ISABELA IRRIGATION SERVICE,
Petitioner,

vs.

UNITED STATES OF AMERICA, et al [Individual landowners]
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit (R. 58-68; 134 F. (2d) 267), entered in this cause on March 11, 1943 [rehearing denied April 13, 1943], affirming the judgment of the District Court of the United States for Puerto Rico in favor of the respondents which, in condemnation proceedings brought by the federal government, had denied compensation to the insular government for injuries to the use and value of its "Isabela Irrigation Service" as an integrated system, and for loss of revenue, consequent upon the United States taking over a portion of the lands in the irrigation

district, and taking over and destroying that part of the insular government's distribution ditches, etc., lying within the boundaries of the area so taken over. The revenue was part of a trust fund for the maintenance of the insular government's "Isabela Irrigation Service" and the amortization of its outstanding "Isabela" bonds for the payment of which the good faith of The People of Puerto Rico had been irrevocably pledged.

The District Court allowed the insular government the value of its directly owned tangible property actually taken,—that portion of its distribution equipment lying within the boundaries of the area taken over for the federal government's "Puerto Rican Air Base"—[viz., rights of way, irrigating ditches, electric power lines, canals, gates, pipes, flumes, etc.,—$64,393.07 for all these "Tangibles" (R. 38)];—but denied any compensation whatever for injury to the irrigation system, as an integrated whole, by thus breaking into and mutilating the irrigated district, and leaving the insular government, and the land owners remaining within the balance of the district, still liable to repay to the bond holders the entire cost of the upper works of the system for collecting and bringing down the waters—and the entire cost of their upkeep and operation,—[as well as for the balance of the distribution system remaining within the irrigated lands not taken],—despite those upper works being larger and costlier, both in original cost and in upkeep, than necessary or suitable for the thus reduced size of the irrigated district.

By order of MR. JUSTICE FRANKFURTER, June 30, 1943 (R. 69), the time within which to apply for a writ of certiorari in this case has been extended to and including July 31, 1943.

QUESTIONS PRESENTED

1. Is the insular government entitled to compensation for injuries inflicted upon it, as above indicated, by the impairment of the use, and thereby of the value and earning power, generally, of its "Isabela Irrigation Service" as an

integrated system, caused by the United States taking over for its "Puerto Rican Air Base" a portion of the lands in the irrigation district, and thus breaking into and mutilating the functioning of the Irrigation Service as a whole, —in addition to compensation for the actual cost value of that portion of its distribution equipment which had been located within the area taken over?

2. Or, on the other hand, is the insular government's right to compensation limited to receiving payment, solely, of the actual cost value [depreciated] of that part of its distribution equipment that had been so located within the area taken over, and has now been taken and destroyed by the federal government, in the taking over of those lands?

Petitioner, the insular government, believes that the first question should be answered in the affirmative; and the second question in the negative.

The Circuit Court of Appeals, however, affirming the District Court, holds the opposite.

3. What proportion of the amount of the insular government's injuries to the irrigation system as an integrated whole, or of the depreciation of the value and of the earning power of the whole system, should be charged against the awards to the individual land owners within the irrigated district taken over by the United States, in release or satisfaction of the liabilities of their lands for the payments of the assessments for the maintenance of the system and the amortization of the bonds?[1]

The District Court apparently thought this question a matter for future consideration,—"should properly be from the award of compensation for the lands" (R. 47), "If there existed any compensable interests in the lands because of being in the irrigation district".

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[1] Other subsidiary questions are indicated in the "Statement" and in the "Argument" in the Supporting Brief (*infra*, pp. 12-13). The questions here stated constitute the important and decisive issues in the case.

The Circuit Court of Appeals, while recognizing (R. 65) that the People of Puerto Rico

> "has not relinquished its claim of a lien upon the funds paid for the property under discussion which are undistributed and it may even now commence an action to satisfy its lien",

holds that The People of Puerto Rico did not have any "presently existing lien upon all the lands in the irrigation district for the purpose of collecting these special assessments" (R. 66) and apparently concludes,—although without expressly saying so,—that there was no liability against the lands which could be recognized as a basis for giving The People of Puerto Rico any portion of the awards to the landholders in the condemnation proceedings. [The record does not show the amounts of the landholders' awards, but it is stipulated (R. 55):

> "that the availability of irrigation for the lands previously taken had been considered as an element adding to their value, and that that element of value was included in the awards of compensation made in said judgment and decision"].

Apparently no reduction was made from the added value awarded to the lands for "the availability of irrigation", *on account of their liability to pay their shares* of the cost of building the irrigation system and of maintaining and operating it. Certainly no part of the added element of value for the "availability of irrigation" was subtracted from the awards to the landowners, nor allotted to The People of Puerto Rico in satisfaction of the release of the land from that liability.

As to this question the petitioner believes that the release of the lands from that liability for the repayment of their shares of the cost and of the maintenance and operation of the entire system, should have been taken into consideration by the District Court in making the awards; and that, after recognizing for the benefit of the individual land own-

ers the increased value of the lands by reason of the availability for irrigation which they enjoyed because of the construction and operation of the Isabela Irrigation System, *there should have been subtracted* from the amounts of such increased valuations, for each of the parcels of the land taken over within the district, the amounts of *the present value or present worth of their respective liabilities*[2] on this account; and that those subtracted amounts, for such liabilities respectively, should have been awarded to The People of Puerto Rico in payment, *pro tanto,* of compensation for the injury to the irrigation system as an integrated whole, and to aid, to that extent, in enabling it either to reduce proportionately its bonded indebtedness for the construction of the system or else to extend its distribution ditches and equipment over a countervailing area of lands available to be newly brought within its irrigated district and thus restore the normal functioning of the upper works of the district in accordance with the capacity for which they were built.

STATEMENT

The history of the Isabela Irrigation Service, and of the inception of this proceeding, is outlined in the District Court's opinion (R. 39-44), and in that of the Circuit Court of Appeals (R. 58-60; 134 F (2d) 267, 268). The latter court says (R. 58-60, *supra*):

> "MAHONEY, J. This is an appeal from an order of the District Court of the United States for Puerto Rico dismissing the claim made by the People of Puerto Rico on behalf of the Isabela Irrigation Service for additional compensation[2½] in proceedings instituted by the

---

[2] Voluntary assent of owners of at least 10,000 acres was a condition to the Isabela Irrigation Law going into effect in the first place. (Sec. 4, Act No. 63 of 1919; Appendix, *infra,* p. 62).

[2½] That is, for compensation for injury to the Isabela Irrigation System as an integrated whole, and for deprivation of revenue for the irrigation system, consequent upon the United States taking over a substantial part of the land in the irrigation district, in addition to the value [which the

United States to acquire land by condemnation for military purposes.

"The United States, on September 6, 1939, filed its petition and declaration of taking in the district court and deposited in the registry of the court certain sums of money as the estimated compensation for the condemned land. Included in the land described in the petition were 592 acres[3] located within the Isabela Irrigation Service.

"The Legislature of Puerto Rico in 1919 authorized the issuance and sale of bonds to secure funds for the construction and development of an irrigation system provided for by Act No. 63, called the Isabela Public Irrigation Law. The good faith of the People of Puerto Rico was pledged for the payment of the bonds and it was recited in Act No. 59, Section 8 (1919), that the revenues derived from assessments levied upon the lands included in the irrigation distrct were to be devoted to the payment of the interest and principal of the bonds. The proceeds of the sale of the bonds and all sums accrued by reason of assessments of taxes and sale of water and power within the irrigation district were to be deposited in the treasury of Puerto Rico in a trust fund to be known as the "Isabela Irrigation Fund." It was further provided that all expenditures for the construction and maintenance of the irrigation system were to be made therefrom. Each tract of land was liable under the Act only for its proportionate share of the assessments and the right to use the water from the system was made inalienably appurtenant to the land. Section 29 of the Public Irrigation Law provided that the amount assessed under the provisions of the Act for the different tracts comprising the permanent irrigation district should be a charge upon the lands in favor of The People of Puerto Rico and should constitute a lien upon the lands. The annual assessment was not to exceed $15 per acre. It was not until 1928 that the operation of the system was begun and

[3] And 703 acres more in the companion case of *Pedro Hernandez Almeida, et als.* (R. 50, 52, 56-"19").

District Court allowed] of the insular government's own tangible property taken over by the United States: "additional compensation" in that sense.

later in July, 1929, the Treasurer was authorized to issue additional bonds in the amount of $1,250,000 to pay for installments of principal and interest on the original bonds and the cost of operation and maintenance until the assessments on the land brought in sufficent funds for this purpose. Subsequently, the Legislature passed Act No. 70 (1934) authorizing the Treasurer to defer unpaid assessments up to June 30, 1934, and such deferred assessments were converted into a current debt of the landowner and the formerly existing liens for the payment of said assessments were extinguished. By Act No. 78 (1936), the Legislature of Puerto Rico suspended Section 29 of the Public Irrigation Law, as amended, until June 30, 1941, insofar as it referred to assessments, and in lieu of assessments, provided that the Treasurer levy a special tax of $1.00 per acre on the land in the district from July 1, 1936, to June 30, 1941. This Act also authorized the Commissioner of Interior to sell water at specified rates to the landowners whose land was in the irrigation district, if they had paid the special tax, and to sell water to land owners outside the irrigation district at slightly higher rates, without a payment of the special tax. Section 34 of Act 63, *supra*, which made the right to use the water inalienably appurtenant to the land in the irrigation district, was suspended. By Act No. 178 (1941), the Legislature of Puerto Rico continued the special tax of $1.00 per acre without allotment of any water, and continued the suspension of Sections 29, 33 and 34, of Act 69, *supra*, until June 30, 1951, and the provision for the sale of water to landowners whose land was not in the irrigation district was continued."

While the annual levying of the assessments under the original Acts was *suspended* by Section 1 of the Act of May 12, 1936, until June 30, 1941, and again *suspended* by Section 2 of the Act of May 14, 1941, until June 30, 1951 (Appendix *infra*, pp. 91-92, 98-99), yet there is nothing in either of those suspensions in any way releasing or changing the liability of the lands for the assessments, or the ministerial duty of the Treasurer to levy them again, beginning June 30, 1951, under the original Acts of 1919 and their subsequent modifications above noted; and, in the meantime, a like liability was

created by such Acts of 1936 and 1941 for the *interim* "special taxes" of $1.00 per acre to be levied during the suspensions, until June 30, 1951 (Acts of May 12, 1936, and May 14, 1941; Appendix *infra*, pp. 92, 99-100).

DISTRICT COURT'S OPINION

The District Court (R. 46-47, 49) thus rather too narrowly summarizes the claim of this petitioner, The People of Puerto Rico, as presented to that court:

> "As disclosed by the memorandum submitted by claimant in support of this claim, the following grounds are set forth:
>
> "1. Damages caused by the alleged severance or withdrawal of the 592 acres of land from the total land area within the irrigation district.
>
> "2. Damages caused by the alleged severance of that part of the distribution system located within the lands taken from the entire system. * * *
>
> " * * * The basis of this theory, as claimant states in its memorandum, is that the lands taken are no longer subject to the assessments provided for in the Isabela Public Irrigation Law, and that the lien on the land securing unpaid assessments has been lost" (pp. 46-47) * * * .
>
> "What claimant contends is that it has suffered damages because it has lost the revenue which it anticipated it would receive from the owners of the lands taken by sale of water, electric power, and by assessments" (R. 49);

and, viewing the insular government's claim in that aspect, the District Court denied it on the grounds that (R. 49):

> "Such a loss, if it exists, is like the loss of patronage by a telephone company when lands of its subscribers are condemned. And that is a type of consequential damage not compensable. (See *Deepe* v. *United States*, 103 Colo. 294, 86 Pac. (2d) 242). Insofar as loss of future assessments is concerned, the case is like the loss of bondholders upon condemnation by the United States of lands to which they looked for assessments to pay the bonds, which type of loss has been held to be non-compensable. (See *John K. and C. Mullen Benevolent Corp.* v. *United States*, 290 U. S. 89). Such dam-

ages are also held to be too speculative. They are really anticipated future profits from loss of business, and are clearly not compensable under the authorities. (See *Seaboard Airline R.* v. *United States,* 275 Fed. 77, app'd 262 U. S. 341[4])"

OPINION OF THE CIRCUIT COURT OF APPEALS

In the final pages of its opinion the Circuit Court of Appeals states its conclusions and decision (R. 65-68; 134 F. (2d) 267, 272-273) as follows:

"This issue turns upon a proper interpretation of the pertinent statutes dealing with the creation of the irrigation system, the issuance of the bonds in question, and the assessments of the special levies and taxes. Section 8 of Act No. 59, *supra,* provided that The People of Puerto Rico irrevocably pledged its good faith for the payment of the interest and principal of the bonds, and it further provided "the foregoing provisions regarding the payment of interest on the said bonds and the payment of principal, shall be deemed to be in the nature of a continuous appropriation and be sufficient authorization to the Treasurer of Porto Rico to make such payments, and no further appropriation for such purpose shall be required." Section 29 of the Public Irrigation Law provided that the Treasurer of Puerto Rico should calculate the amount of the interest and principal due upon the outstanding bonds for the ensuing fiscal year and the estimated amount for the cost of the operation and maintenance of the irrigation system, and after taking into consideration certain other sums which we need not discuss, the amount finally determined by him constituted the total sum to be assessed for the fiscal year and this sum was required to be levied upon the land included in the irrigation district. Section 29 further provided:

> 'Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district. The amounts resulting from such computation . . . shall be ex-

[4] Erroneous citation; 261 U. S. 299, 304; but does not support District Court.

tended upon the taxroll for the different tracts at the time comprising the permanent irrigation district. The taxroll so extended shall be completed by the treasurer of Porto Rico on or before the first day of July of each year, and is hereby imposed as a charge upon the said lands (but not as a personal liability upon the owners thereof) in favor of the People of Porto Rico and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Porto Rico as provided by law, . . . '.

"It is the contention of the People of Puerto Rico that the duty of the Treasurer was a ministerial one and that under the provisions of the Act in question there was a continuing requirement that the land should be assessed for the payment of the interest and principal of the bonds and that, therefore, the People of Puerto Rico had a presently existing lien upon all the lands in the irrigation district for the purpose of collecting these special assessments. When the United States condemned these lands it destroyed this lien. With this contention we cannot agree. It may be admitted that the duties of the Treasurer were clearly prescribed by the various statutes and that, therefore, what was done by him was purely ministerial, but this does not change the nature of the assessments on the property in question. It is clear from a reading of the sections which we have set forth that the lands in question were to be annually assessed to meet the annual interest and principal payments of the bonds. Since the lien in favor of the People of Puerto Rico arose only after the Treasurer made his annual assessments, there was a presently existing lien only from such time until the tax was paid. Liens for taxes to be assessed in the future can at the most be potential rather than present liens and as such cannot be satisfied out of moneys paid into court under 40 U. S. C., § 258(a). *People of Puerto Rico* v. *United States*, 131 F. (2d) 151 (C. C. A. 1st, 1942). The People of Puerto Rico could have provided that the amounts required to pay the principal and interest on the bonds and the cost of maintaining and operating the irrigations system should constitute a

lien in its favor upon the property but this was not done. There is no justification for giving a liberal construction to statutory provisions creating a lien particularly when, as here, the statute is clear that the Legislature provided that the lien should cover only annual assessments. See 5 McQuillan, *supra,* § 2258, pp. 786, *et seq.*

"We think *Mullen Benevolent Corporation* v. *United States,* 290 U. S. 89, cited by the appellee, is in point and bears a close resemblance to the case at bar. In that case, an action was brought to recover a balance due on bonds issued by the City of American Falls, Idaho. The bonds were issued to finance the cost of constructing sidewalks and sewers in certain improvement districts, and special assessments were levied on the lands in the district in order to cover the payment of the principal and interest of the bonds. There was authority in case of a deficiency in the original assessments to reassess the property in the districts for the amount of the deficiency. By 1927 the United States had either purchased or condemned all the property in the districts. It was generally known by this time, however, that the original assessments were insufficient to pay the interest and the principal of the bonds. By ordinance enacted July 3, 1928, and proceedings pursuant to it, the city reassessed all the land within the districts. As the land was then owned by the United States the assessments were a nullity. The position taken by the bondholders in that case was that the bonds were property and, in the alternative, that they were liens actual or inchoate on the realty. Since a lien could not be foreclosed against lands owned by the United States, it was asserted that the respondent's acquisition of the land destroyed the value of the securities and gave rise to an implied promise to pay the remaining sums due the bondholders. The court held that the United States did not take the bonds nor did it in any way appropriate the right to make future assessments. As it said (pp. 94, 95): "By purchase of the lands the United States at most frustrated action by the City to replenish the assessment funds to which alone the bondholder can look for payment of his bonds, but this was not a taking of the bondholder's

property." At the time of condemnation in that case there was no presently existing lien upon the lands in question but there was a right to make future assessments at the time the property was condemned. We see no great difference in a right to make future assessments and a right to make a reassessment.

"The People of Puerto Rico seeks to distinguish *Mullen Benevolent Corporation* v. *United States, supra,* from the case at bar on the grounds that (a) there, the bonds were not the direct obligation of the City of American Falls, whereas, here, the People of Puerto Rico pledged its good faith that the bonds would be paid, and (b) there, all the assessments made pursuant to the original ordinance had been fully paid or discharged, and that in order to provide for the payment of the deficiency in the original assessment a new ordinance was required, whereas here, all the taxes and assessments falling due in the future were the result of the original legislative action taken by the People of Puerto Rico prior to the institution of these condemnation proceedings. Granted that the differences pointed out by the People of Puerto Rico exist, nevertheless, they do not constitute a sufficient basis for deviating from the holding of the court in that case."

"*The judgment of the District Court is affirmed.*

"MAGRUDER, J., heard the argument but through absence was unable to participate in the decision of this case."

The court also discusses a supposed "shift" by The People of Puerto Rico, in the District Court, by its "Statement of Particulars" (R. 23-29), and "Stipulation" (R. 29-34) of February 28, 1942, from the position taken in its original answer of April 5, 1940 (R. 9-12), with relation to the basis of its claim for compensation for the so-called "Financial Items" representing the loss caused it by the federal government's taking a substantial part of the lands within the irrigation district, in addition to the tangible loss represented by the value of those parts of the insular government's own ditches, flumes, pipes, etc., located within the lands thus taken. But the Circuit Court

of Appeals itself recognizes that the District Court did not consider that there was any essential change or "shift" in the fundamental basis of the insular government's claim. It says (R. 62, 134 F. (2d) at p. 270):

> "In view of the fact that the lower court assumed by its discussion of the issue that The People of Puerto Rico did not abandon its claim of compensation for the right to make future assessments, we shall hereafter give it consideration." [5]

There is no "shift" in the underlying basis of the insular government's claim; but, as noted above, only in the suggestions of the *method of calculating the damages.* There is nothing in the record in the District Court or in its opinion or order indicating that, in that court, either the parties or the court itself considered that there was any essential change or "shift" in the essential basis of the insular government's claim.

The *measure of the damages* is really immaterial here, inasmuch as the lower courts have wholly denied petitioner's right to any compensation whatever for the "Financial Items". Whatever the proper measure, or method of the calculation, should be, the damages should be calculated and measured and allowed by the District Court; and this case should be remanded to that court for this purpose. [See *infra,* pp. 22-23, and Supporting Brief, pp. 49-50].

GIST OF THE LOWER COURTS' OPINIONS

The lower courts' reasons for denying the compensation for the "Financial Items" asked by the insular government here really boil down primarily to those stated in the above-quoted paragraph of the District Court's opinion (R. 49; *ante* pp. 8-9), that is to say that the insular government's damages suffered by reason of the United States

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[5] Apparently the Circuit Court of Appeals has misunderstood,—or unduly emphasized the effect of,—the phrase *"additional compensation by the United States"* as used in the Stipulation (R. 33, *supra*).

taking away the 592 acres[6] of lands from the irrigation district, and also taking and destroying those portions of the insular government's distribution system of its Irrigation Service located within the boundaries of the area so taken over,—and thus breaking into and injuring the Irrigation Service as an integrated whole,—and also thus depriving the insular government of the revenues accruing to it from the irrigation assessments from the lands within that area, for its trust fund for the amortization of its irrigation bonds and the maintenance and operation of the irrigation system,—"is a type of consequential damage not compensable"; is "like the loss of bondholders upon condemnation by the United States of lands to which they look for assessments to pay the bonds, which type of loss has been held to be non-compensable"; that such damages are "too speculative"; that they "are really anticipated future profits from loss of business and are clearly not compensable under the authorities".

PETITIONER'S POSITION: ERRORS OF THE LOWER COURTS

1. Both of the lower courts appear to have misunderstood the insular government's position,—although in somewhat different ways. The District Court thought that the insular government was somehow asking double compensation (*Opinion*, R. 50); and the Circuit Court of Appeals seems to have been under the impression that it had attempted, in the District Court, and there, to "shift" the essential basis of its original claim. [See *ante*, pp. 12-13.]

2. *But the District Court's opinion overlooks,*—as does also, in effect, that of the Circuit Court of Appeals,—the radical difference between all the authorities it cites, and

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[6] In this case; and 703 acres more in the companion case of *Pedro Hernandez Almeida, et als.* (R. 50; *ante* Footnote 3, p. 6).

the case here. In all the cases cited in the District Court's opinion, and in all other cases that have come to our attention where damages somewhat similar to those here involved, actually suffered, were considered "too speculative", or as being in the nature of loss of "anticipated profits", examination of the underlying facts shows that the organization damaged *had held no contractual* (or *quasi*-contractual *legal right or duty* to continue to operate its system as an integrated whole, or to continue to collect the payments of which it was thus deprived,—whether from land owners within irrigated districts, customers of telephone companies, or whomsoever they may have been.

3. But in the present case the insular government, by express provision of the Organic Act of Congress (Sec. 3; Appendix, *infra*, pp. 55-56) *did have the legal power*,—and by the provisions of the Acts of the Legislature itself, Nos. 59 and 63 of 1919 and the amendatory and supplemental Acts (Appendix, *infra*, pp. 56 *et seq.*),—*and the assent of the landholders in the irrigated district, under Section 4 of Act No. 63 of 1919* (Appendix, *infra*, p. 62),—*did have the legal duty as well as the legal power, as trustee for the bondholders and for all of the land owners within the irrigated district, as well as for the protection of its own Treasury* under its pledge behind the bonds of "the good faith of The People of Puerto Rico" "hereby irrevocably pledged" (Sec. 8, Act No. 59),—to continue to operate its Irrigation Service as an integrated whole, as it had stood before it was broken into by the federal government in these proceedings,—and able to continue to levy and to collect the assessments and the special taxes, and out of their proceeds to continue to defray the expenses of the maintenance and operation of the irrigation system, and to amortize the bonds.

4. "Just compensation" in condemnation proceedings includes compensation not only for the value of that part of a property [such as here an integrated irrigation system] actually taken [such as here those parts of the distribution

ditches, flumes, pipes, etc. lying within the portions of the lands within the irrigation district which were actually taken over by the United States], but also for any damage or deterioration of earning power or ability to carry out the purpose of the integrated system sustained by the remaining portion of the property not actually taken, by reason of the taking away of a part of the original system through the condemnation proceedings.

5. This court said in *United States* v. *Grizzard*, 219 U. S. 180, 183-184:

> "Whenever there has been an actual physical taking of a part of a distinct tract of land, the compensation to be awarded includes not only the market value of that part of the tract appropriated, but the damage to the remainder resulting from that taking, embracing, of course, injury due to the use to which the part appropriated is to be devoted. * * *
>
> "The constitutional limitation upon the power of eminent domain possessed by the United states is that 'private property shall not be taken for public use without just compensation.' The 'just compensation' thus guaranteed obviously requires that the recompense to the owner for the loss caused to him by the taking of a part of a parcel, or single tract of land, shall be measured by the loss resulting to him from the appropriation."

6. This is well established. See also: *United States* v. *C. B. & Q. R. Co.*, 82 F (2d) 131, 134-137 [Eighth Circuit; *certiorari denied*, 298 U. S. 689]; *United States* v. *C. B. & Q. R. Co.* 90 F (2d) 161, 168 [Seventh Circuit; *certiorari denied*, 302 U. S. 714]; *United States* v. *Wheeler Township*, 66 F. (2d) 977, 984-985 [Eighth Circuit]; *Town of Bedford* v. *United States*, 23 F. (2d) 453, 454-457 [First Circuit]; *United States* v. *Miller*, 317 U. S. 369, 376; *United States* v. *Welch*, 217 U. S., 333; *Monongahela Nav. Co.* v. *United States*, 148 U. S. 312, 328-330, 341-345; *Cooley Constitutional Limitations*, pp. 565-566; *Lewis Eminent Domain* (3rd Ed.), Secs. 868, 710. *Confer; Sharp* v. *United States*,

191 U. S. 341, 350-357; *United States* v. *New River Collieries*, 262 U. S. 341, 343.

7. In the present case, the insular government had established a rather extensive irrigation system in the western part of the Island,

> "for the district situated approximately between the Guajataca river on the East and the town of Aguadilla on the West, including the irrigable lands in the municipalities of Isabela, Moca and Aguadilla" (Sec. 1, Act No. 63 of 1919; Appendix, *infra*, p. 61).

This Court will take judicial notice of the geography of the Island. The irrigation system of course includes means for gathering the water at its sources in the higher mountains or hills by dams and intakes, and for bringing it down by flumes and pipes to the lower ground and there distributing it to the lands to be irrigated in the irrigation district, and also includes pumping plants and electric light and power plants as contemplated in the original and amendatory Acts.[7] The revenues of the Irrigation Service for the repayment of the cost of the construction of the entire system [amortization of the bonds], and for the maintenance and operation of the system, must, of course, come wholly from the water delivered to the irrigated lands by the distribution pipes and ditches in the lower end of the system [except insofar as revenue may be derived from the sale of electric power generated at the power plants]. Yet

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[7] *Confer* Sec. 3, Original Act No. 63 of 1919; Appendix, *infra*, p. 62:

> "The proceeds of the sale of the bonds and all moneys accruing by reason of assessments of taxes and sale of water and power within the temporary and permanent irrigation districts * * * shall * * * be deposited in the Treasury of Porto Rico in a trust fund * * * 'Isabela Irrigation Fund'."

the upper parts of the system devoted to the gathering of the water in the higher levels, and to bringing it down to the lower levels where it is made available for distribution, are nevertheless just as important, and just as costly,—or costlier,—than the distribution pipes and ditches located on the lower levels on the irrigated lands themselves,—although the upper works are not capable, by themselves, of producing any revenue, but serve only to gather the water and to bring it down to the places where it can be made to serve its purpose and to produce revenue.

8. It is plain, therefore, that in order to provide for the reimbursement of the costs of the construction of the whole system and of its continued maintenance and operation, it was necessary to make the irrigated lands benefited by it responsible and liable, not only for the cost of the distribution equipment—flumes, pipes, ditches, gates, etc.,—actually located on those lands, but also, equally, for their respective proportionate shares of the cost of constructing, maintaining and operating the upper works by which the water was gathered and brought down to the land. And that purpose was accomplished by the provisions of Acts Nos. 59 and 63 of 1919, and the amendatory and supplemental Acts,—the Acts under which the bonds were sold and the money was thus realized for the construction of the system,—and under which the system was built.

9. Therefore, when in these condemnation proceedings the federal government took over a substantial portion of the irrigated lands at the lower end of the system, the damage directly and necessarily resulting to the system as an integrated whole,—and to the insular government as its owner as trustee for all of the land-owners within the entire district, and for the bond-holders, and in its capacity as guarantor of the bonds for which its own good faith had been irrevocably pledged,—was twofold: (1) Its immediate loss of the distribution equipment which it had placed, and owned, upon the particular lands taken over by the federal government;[8] and more importantly, (2) Its loss

of the benefit the use of a proportionate part of the means which it had provided for furnishing the water to the lower distribution systems and thereby of performing the functions for which the Irrigation Service was organized, and, in so doing, of producing revenue for reimbursing the cost of the construction and of defraying the expenses of the upkeep and maintenance of the upper works,—of all those portions of the system devoted to the gathering of the water and bringing it down to the irrigated lands,—those portions which do not in themselves immediately produce revenue.[9] The computation of this loss constitutes the so-called "Financial Items" in petitioner's claim here (R. 12, 23-24; *ante*, pp. 12-13).

10. **It follows that the District Court was plainly in error** in holding that the insular government's damages to the irrigation system were fully compensated (R. 49-50) by paying it "the fair value of the distribution system located on the lands taken", including "the cost new of the construction of the 13,000 foot reinforced concrete pipe along the Eastern boundary of the lands taken, to connect the several canal",[10] and that:

> "Claimant would not have been entitled to greater compensation than that; *as to said part of its distribution system it has been made whole.*" (*Italics supplied*)

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[8] The "Tangible Items" $64,393.07 allowed without question by the federal government and directed paid by the District Court (R. 10--11, 17-18, 21-22).

[9] It is manifest that, **by way of illustration**, the federal government might conceivably have taken over all of the irrigated lands themselves, without taking the upper works, and thus have left the insular government no means whatever [except from sales of electric light or power] for reimbursing the cost of all the upper works,—or for amortizing the bonds,—except insofar as the repayment of the cost of the distribution equipment located on the irrigated lands might extend.

[10] Simply to connect, as the court states, parts of the canal directly severed from each other by the taking of these 592 acres of land by the United States, so as to lead the water in

11. The proportionate deprivation of the means of carrying on the functions for which the integrated system had been constructed, and thereby of repaying the cost of the construction and of the upkeep and maintenance of those portions of the irrigation system which we have called the upper works, is just as much a direct loss to the insular government,—and the deprivation of it is just as much a "taking" by the federal government, for which "just compensation" is required by the Constitution, as is the taking of the local distribution equipment located within the irrigated lands themselves. It is equally a direct loss to the insular government,—a direct deprivation of its property.

12. Manifestly the insular government had a direct property right not only in these upper works themselves but equally in the means it had provided for carrying on the functions of the entire integrated system, and for amortizing the cost. It had built the works of adequate size and capacity to serve the entire system, and had issued bonds on the whole system, covering the entire cost, upon which in accordance with the powers given it by the Congress in the Organic Act it had made itself personally liable, and had irrevocably pledged the good faith of The People of Puerto Rico. It had made the lands within the irrigated district liable for the repayment of the bonds, and had made the various parcels of lands as among themselves [or the land owners] proportionately responsible for their proportionate shares. It had provided the means for annual collection of the assessments in such fashion that, as the Circuit Court of Appeals itself says in its opinion, the duty of the Treasurer to make the collections became "purely ministerial" (R. 66); and it had made the provision for the payments "a con-

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a new course around, and outside of, the new military reservation. This has nothing whatever to do with reimbursing the cost of the upper works of the irrigation system, something entirely outside of the distribution equipment which had been located on the lands taken by the federal government.

tinuous appropriation", so that "no further appropriation for such purpose shall be required." (Sec. 8, Act. No. 59 of 1919).

13. Whether or not those provisions constituted, technically, the creation of an immediate continuing lien on the lands, yet in any event they did constitute *a direct contractual liability,* on the part both of the landholders and of the insular government itself as trustee and guarantor, to make and to collect the payments and to pay off the bonds. The means thus provided for these payments constituted *contractual obligations,*—or *quasi*-contractual obligations,—mutually binding upon the bondholders, the landholders, and the lands themselves within the irrigation district, and upon the insular government. The federal government's breaking into those contractual obligations by taking away a substantial portion of the irrigated lands, and thereby preventing the assessments from those lands from being applied for their proportionate parts of those obligations, was therefore a "taking" of property, for which, as above stated, under the Constitution, "just compensation" should be made.

14. Remembering that the relationship of the insular Legislature to the Congress, and to the federal government, is substantially like that of city council to a State legislature and to the state government, it may be said that these provisions were analagous to a franchise granted by a city council to cover the costs of amortizing bonds of a city water system or other public utility. But whether considered in the light of a franchise, or of a lien, or simply of a contractual obligation, these contracts constituted *property* and property rights in the insular government for its own benefit and, as said above, as trustee also, both for the bondholders and for the owners of the lands in the other parts of the irrigated district, who should not be compelled by the taking away by the federal government of these particular lands to pay a greater proportion of the costs of the upper works than they would otherwise have been required to pay.

15. That such contract rights and obligations constitute

property, which cannot be taken without just compensation being made for it, is illustrated, for example, by the decisions in tort cases allowing recovery for damages against a third party who wrongly influences a party to a contract to refuse to carry out his contract obligations. Such cases as *Angle* vs. *C. St. P. & O. R. Co.*, 151 U. S. 1, 10-27; *Lewis* vs. *Bloede*, 202 Fed. 7; *Morgan* vs. *Andrews*, 107 Mich. 33; *Lamb* vs. *Cheney*, 227 N. Y. 418; *Campbell* vs. *Gates*, 236 N. Y. 457; *Hornstein* vs. *Pudwitz*, 254 N. Y. 443; *Reiner* vs. *No. Am. Newspaper Alliance*, 259 N. Y. 250, 254; and others of that category in different jurisdictions, rest upon recognition of the fact that *contract obligations constitute property* which may not be interfered with,—[and we submit, *a fortiori*, may not be directly taken away in condemnation proceedings],—without making just compensation.

16. The decision of this court in *Mullen Benevolent Corp.* v. *United States*, 290 U. S. 89, upon which the Circuit Court of Appeals relies (R. 67-68), as did likewise the District Court (R.49), *is not to the contrary;* but rather supports the position of The People of Puerto Rico in the present case. The Circuit Court, as well as the District Court, as it is believed, misunderstood and misapplied the decision of this Court in that case. [See as to this, Supporting Brief, *infra*, Point XI, pp. 40-46.]

17. The individual landholders within the irrigation district are still parties to these condemnation proceedings, [Circuit Court's opinion, R. 64-65],[11] and the District Court should have proceeded to determine the amounts to be charged against their respective shares of the award, in

[11] The award has not been distributed, and the landowners within the irrigated district are still parties to the proceedings, subject to the jurisdiction of the court [R. 18-19, and Exhibits "IV" and "VII"; R. 19-21],—the "Disclaimer" filed by The People of Puerto Rico on January 14, 1942, having released only those landowners *outside of the irrigated district*, against whom The People had no claims of any kind, but not those within the district, who remain parties to the case.

release or satisfaction of, and in payment of, their shares of the "just compensation" to The People of Puerto Rico, for the present worth or present value of the liabilities of their irrigated lands for the reimbursement of the cost of building and of the maintenance and operation of the entire irrigated system for which the insular government, and the remaining landholders within the entire district, remain irrevocably bound to the bondholders,—the entire system, as an integrated whole. [See Question "3", under "Questions Presented," *ante,* pp. 3-5].

STATUTES

Constitutional and federal and insular statutory provisions chiefly involved are in the Appendix (*infra,* pp. 55-101).

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law of wide general interest, especially to the insular government and to the people of Puerto Rico, as well as to other States and municipalities possessing irrigation systems and similar undertakings with bonds outstanding to amortize the cost, in view particularly of the increasing number of federal condemnation proceedings. It is believed that the lower courts, the Circuit Court of Appeals as well as the District Court, have decided this case in a way that is in conflict with applicable decisions of this Court, particularly with *United States* v. *Grizzard, supra,* 219 U. S. 180, 183-184; *United States* v. *Miller,* 317 U. S. 369, 376; *United States* v. *Welch,* 217 U. S. 333; and *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 325, 328-330; and have misunderstood and misinterpreted and misapplied this Court's decision in *John K. and C. Mullen Benevolent Corporation* v. *United States,* 290 U. S. 89; and that the decision of the Circuit Court of Appeals, as well as that of the District Court in this case, is in conflict also with decisions of other Circuit Courts of Appeals, particularly with those of the Eight Circuit in *United States* v. *C. B & Q. R. Co.,* 82 F (2d) 131, 134-137, and of the Seventh Circuit in

United States v. *C. B. & Q. R. Co.*, 90 F. (2d) 161, 168; as well as with that of the Eighth Circuit in *United States* v. *Wheeler Township*, 66 F. (2d) 977, 984-985; and with an earlier decision of the First Circuit itself in *Town of Bedford* v. *United States*, 23 F. (2d) 453, 454-457.

The question here presented has not been, and it is believed should be, directly settled by this Court.

Wherefore, it is respectfully requested that this petition for a writ of certiorari be granted.

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Of Counsel.

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinion of the District Court of the United States for Puerto Rico (R. 39-50) is not officially reported. The opinion of the Circuit Court of Appeals (R. 58-60) appears in 134 F. (2d) 267.

Jurisdiction

The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered on March 11, 1943 (R. 68), and rehearing was denied by that Court on April 13, 1943 (R. 68). The time within which to apply for a writ of certiorari to this Court was extended by order of MR. JUSTICE FRANKFURTER to and including July 31, 1943 (R. 69).

Questions Presented

The questions here presented are stated in the Petition (*ante*, pp. 2-5).

Statutes Involved

These are indicated in the petition (*ante*, p. 23), and in the Appendix (*infra*, pp. 55-101).

Statement

A statement of the case is in the Petition (*ante*, pp. 5-8, and 8-14).

Specification of Errors to be Urged

These are indicated in the Petition under the headings "*Questions Presented*" and "*Petitioner's Position: Errors of the Lower Courts*", and in the "*Reasons for Granting the Writ*" (ante, pp. 2-5, 14-23, and 23-24).

Summary of Argument

A summary of the argument is in the Petition under the heading "Petitioners Position: Error of the Lower Courts" (*ante*, pp. 14-23).

ARGUMENT

Point I

This was an integrated irrigation system consisting of upper works for the gathering of the water and for bringing it down to the levels of the irrigated lands with dams, flumes, pipes, canals, pumping stations, electric light and power generating stations, etc., and distribution systems lower down for distributing the water to the various tracts of irrigated land.

A. It had been constructed, in accordance with the statutory requirements, only after the owners of "at least ten thousand (10,000) acres of irrigable lands situated in the municipalities of Isabela, Aguadilla and Moca" had signified their consent to have their lands included in the irriga-

tion districts (Secs. 4, Act No. 63 of 1919; Appendix, *infra*, p. 62), and was laid out and built in contemplation of the further provision of the same Act (Sec. 32, Appendix, *infra*, pp. 69-70) that "Each tract of land shall be made liable only for its proportionate share of taxes determined as herein provided". Accordingly, all of the upper works, the intakes, canals, etc., were built of a size calculated to take care of amounts of water needed to be provided for the entire acreage within the irrigated districts.

B. Likewise the financial arrangements were made on the same basis. Bonds were sold to realize enough money to construct the entire system on that basis, keyed to accommodate the total acreage within the irrigated districts.

Point II

Breaking into the size of the irrigated districts, and subtracting a substantial part of the area of the irrigated lands within one of those districts by taking away some thirteen hundred acres by condemnation proceedings of the federal government [592 acres in this case, and some 703 acres more in the companion case of Pedro Hernandez Almeida (R. 50, 52, 56-"19", supra)], leaves the upper works unsuitably and unnecessarily large and costly for the irrigation of the balance of the lands in the districts, and burdened with liability for the payment of a correspondingly excessive bonded indebtedness for the cost of construction, and correspondingly heavy maintenance charges,—all to be borne by correspondingly increased assessments on the lands left in the districts,—or else by the insular Treasury under the Legislature's guarantee of the bonds and irrevocable pledge of the good faith of The People of Puerto Rico.

The only other way is to bring a corresponding area of new irrigable lands into the district, so as again to utilize the full capacity of the upper works.

Point III

This injury to the system as an integrated whole by thus

destroying pro tanto the functions which the upper works were constructed to fulfill,—and thereby depreciating their value by depriving them to that extent of their functions and, consequently, the system's earning power,—**is to that extent, a "taking" of the system's property, for which "just compensation" should be made; just as much as was the physical taking over and destruction of that part of the distribution system located within the lands condemned.** *United States* v. *Grizzard, supra,* 219 U. S. 180, 183-184 (quoted *ante,* p. 16); *United States* vs. *Miller, supra,* 317 U. S. 369, 376; *United States* v. *Welch, supra,* 217 U. S. 333; *Monongahela Navigation Co.* v. *United States, supra,* 148 U. S. 312, 328-330, 341-345; *United States* vs. *Chicago B. & Q. R. Co., supra,* 82 F. (2d) 131, 134-139, 140 [C.C.A.-8; *certiorari denied,* 298 U. S. 689]; *United States* vs. *Chicago B. & Q. R. Co., supra,* 90 F. (2d) 161-171 [C.C.A.-7; *certiorari denied,* 302 U. S. 714] *United States* vs. *Wheeler Township, supra,* 66 F. (2d) 977, 982-985 [C.C.A.-8]; *Town of Bedford* vs. *United States, supra,* 23 F. (2d), 453, 454-457 [C.C.A.-1]. *Confer, Sharp* vs. *United States,* 191 U. S. 341, 355-357. And see also: *Cooley, Constitutional Limitations,* pp. 565-566; *Lewis, Eminent Domain* (3rd Ed.), Secs. 686, 710.

A. Thus where, in connection with the project to improve the upper Mississippi River by the construction of a series of dams and floodways, the United States Government sought to take in condemnation proceedings a small area of the right-of-way of the Chicago, Burlington and Quincy Railroad, but it also appeared that the consequent raising of the level of the Mississippi River above the dam would so raise the level of the water alongside the Railroad Company's track,—which paralleled the river for some miles in Minnesota at that point,—as to result in so seriously softening and weakening the roadbed that the company found it necessary to raise the tracks, at a very considerable expense,—the Circuit Court of Appeals for the Eighth Circuit affirmed a judgment of the District Court allowing $240,000.00 to the Railroad Company, reimbursing the company for the cost of the relocation of its track, over the objection

of counsel for the Government that the damages should be limited to the value of the land actually taken. The Circuit Court said (*United States v. Chicago, B. & Q. R. Co., supra,* 82 F. (2d) 131, 134-139:

> "Specifically, the question in the court below was whether appellee was entitled to recover as just compensation anything beyond the fair and reasonable value of the 24 acres of land actually and permanently flooded. Recovery, to the above extent, is conceded by appellant. * * *
>
> "[3] It is probable that time was when many of the States of the Union on the matter of condemnation of private property allowed compensation only when property was actually taken and for so much as was actually taken, * * *. But long since, recognizing the utter injustice of so narrow a view, amendments to the organic laws, to statutes, and changes in judicial interpretation well-nigh universally, have so changed the rule as now to give compensation for proximate damages to remaining parts of a parcel of land when some part thereof has been actually taken. In short, such change was wrought, by adding to the word "taken" in the provisions of the Constitution, or to the statute, or by judicial interpretation, the words 'or damaged'."
>
> "In the *Grizzard case, supra*" [*United States* v. *Grizzard,* 219 U. S. 180, 183-184, *ante* p. 16], "as also in the *Welch case, supra*" [*United States* v. *Welch,* 217 U. S. 333], "it was held that the value of an easement of access subservient to the dominant estate, a part of which latter was actually taken, which easement was destroyed by being flooded by a government dam, built in the interest of navigation in a navigable stream, was a proper item of damages for which the United States should pay compensation to the owner of the dominant estate. * * *. In the course of discussion the court said among other things this: 'The "just compensation" thus guaranteed [by the Constitution] obviously requires that the recompense to the owner for the loss caused to him by the taking of a part of the parcel, or single tract of land, shall be measured by the loss resulting to him from the appropriation. * * *.

In recognition of this principle of justice it is required that regard be had to the effect of the appropriation of a part, by taking into account both the benefits which accrue and the *depreciation which results to the remainder in its use and value'*.[11]

"So far as we can find, there has been 'neither change nor shadow of turning,' by the Supreme Court of the United States from the above quoted broad enunciation touching what damages are compensable *in a condemnation suit by the United States*[11] for a flowage easement, over land flooded by a dam constructed in the interests of navigation. * * *. (pp. 135-136)

"[9,10] The questions as to damages for ice, wind, and wave action and silting * * * have already been considered. If, as we doubt, any objection as to the competency of evidence admitted to prove cost of a new entrance into St. Paul, has been * * * properly preserved, * * * then we think the objection is met and disposed of by the case of *United States* v. *River Rouge, etc., Co.* (CCA), 285 Fed. 111, and by what was said by this court in the case of *United States* v. *Wheeler Township, supra,* 66 F. (2d) 977, at page 984. Therein, upon a point which we think is wholly germane in principle, we said this:

> 'Both the Fifth Amendment and Article I, Section 13, of the Constitution of the State of Minnesota require "just compensation". This means that the condemnee must be made whole for what is taken from him. * * * What is here taken from the Township? It is the right to maintain its roads at the natural levels of the lake. It had that right up to the condemnation'.

"In the case at bar, as in the situation involved in the *Wheeler Township case, supra,* the facts and circumstances are unique. There, as here, the actual land involved had little, if any, market value. One was a public highway, and the other is often so denominated. Both are for public use; though one was free, and the other is often used in public carriage for hire. One must be kept up and maintained in a safe condition, because

[11] Italics are those of the Circuit Court of Appeals.

> the statute so required; the other must be operated and maintained in a safe condition, because statutes and incumbent duties as a common carrier so prescribed. And the violation of these duties would spell indirectly the utter destruction of the property of the appellee."

B. And so again in another case involving the same railroad company, and the same general project of improvement of the upper Mississippi River, but with relation to the railroad company's tracks on the East bank of the river in Wisconsin, and so coming up from the District Court for the Western district of Wisconsin, the Circuit Court of Appeals for the Seventh Circuit, affirming the district court's judgment for the railroad company, for $347,811.65,—

> "$400 by way of compensation for appellee's interest in the 1.6 acres" [the land actually taken], "and $347,411.65 for damages proximately caused by the continuous maintenance and operation of the Alma Dam",—

said (*United States* v. *Chicago B. & Q. R. Co., supra,* 90 F. (2d) 161, 167, *et seq.*:

> "[1] It is contended by the Government that it was entitled to appropriate the 1.6 acres, and in so doing it was not liable to appellee in that action for damages accruing by reason thereof to the remainder of appellee's property. We do not understand this to be the law. In *United States* v. *Grizzard* 219 U. S. 180" [*ante,* pp. 16, 28] "the Court said:
>
> > 'Whenever there has been an actual physical taking of a part of a distinct tract of land, the compensation to be awarded includes not only the market value of that part of the tract appropriated, but the damage to the remainder resulting from that taking, embracing, of course, injury due to the use to which the part appropriated is to be devoted.'
>
> "That rule has been undeviatingly followed, both by prior and subsequent decisions, * * *. (p. 167)

"The damages awarded by the verdict were caused by the necessity of appellee's raising and protecting its embankment and raising and extending its bridges." * * *. (at p. 169)

"[5,6] The public easement of navigation is limited to the natural levels, widths and flows of navigable streams, * * *. True, the burden of the natural servitude may be increased by the Government, but not without just compensation. * * *. Appellee's properties were constructed in reliance upon the natural level, width and flow of the Mississippi in this area. * * * The river bed is the land upon which the action of the water has been so constant as to destroy vegetation. It does not extend to nor include the soil upon which grasses, shrubs and trees grow. * * * Beyond that point the Government cannot go without compensation for proximate damages." (at page 170)

C. Similarly, in the earlier decision of the Eighth Circuit, in *United States* v. *Wheeler Township,* 66 F. (2d) 977, the judgment of the District Court for the District of Minnesota was sustained allowing Wheeler Township the amount of the damages occasioned to it in relocating its highways at higher levels, and rebuilding them in such a way as to make them "reasonably passable". The roads were those along the shore of the Lake of The Woods which were being partially flooded by the Government's raising of the level of the Lake and of Rainy River under the Treaty of July 17, 1925, between the United States and Canada, and Acts of Congress designed to carry the treaty into effect. The Circuit Court of Appeals said (*United States* v. *Wheeler Township, supra,* 66 F. (2d) 977, 984-985):

"[5,6] The situation here is peculiar. To these exceptional facts we must apply such established general principles as are applicable in order to determine the proper measure of damage—or, more accurately stated, of compensation. Both the Fifth Amendment and Article I, Section 13, of the Constitution of the State of Minnesota, require 'just compensation'. This means that the condemnee must be made whole for what is

taken from him. *United States* v. *Grizzard,* 219 U. S. 180, 184; *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 326, 328; *Winona and St. Peter R. Co.* v. *Denman,* 10 Minn. 267. What is here taken from the township? It is the right to maintain its roads at the natural levels of the lake. It had that right up to this condemnation. * * *. Also, what appellant is here doing is taking, in a legal manner, this right to the extent of the flowage level of the Treaty and of the petition in this action. * * *.

"[7-9] When we come to the method of ascertaining the amount of compensation—the measure of damages or compensation—we encounter the peculiarities of this situation. We have a safe starting point in the above fundamental legal proposition that the township must be made whole from money loss. When the ordinary measure of loss (decrease in actual or assumed 'market value') cannot be applied, as here, then 'whatever is necessary to be considered in order to determine what is an equivalent for the appropriation of private property is germane to the question of compensation". *Winona and St. Peter R. Co.* v. *Denman* 10 Minn. 267 (*supra*), and see *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 328 (*supra*). Here we must be guided by this record as to what money loss will fall upon the township because of this condemnation. It is the duty of the township to maintain its roads and that duty can be enforced (see above citations from Minnesota statutes). The expense therefore comes from the taxpayers of the township, for whom the township is (in a sufficient sense) trustee and representative. The right of the township and its taxpayers is to maintain such roads with the lake at natural levels and 'the right to exoneration from the burden of constructing and maintaining a substitute way is a valuable property right belonging to the group of taxpayers called a town". *Town of Bedford* v. *United States* (C.C.A.-I), 23 F. (2d) 453, 456. To the extent that this burden has been increased by this taking, there is a deprivation for which the law requires compensation. * * *. Why should not this added expense be made good by the one causing it? It cannot be done except in this proceeding."

D. So again the same rule was applied by the Circuit

Court of Appeals for the First Circuit, itself, in the *Town of Bedford* case last above cited by the Eighth Circuit Court, *—Town of Bedford* v. *United States, supra,* 23 F. (2d) 453, 454-457 (ANDERSON, J.), a case quite analogous, in many respects, to the case here at bar.

There the United States, in 1926, took in condemnation proceedings, for a Veterans' Hospital, a tract of about 400 acres of land in the town of Bedford. The taking covered "all rights of every name, nature, and description in and to that portion of Springs Road, so-called" within the tract condemned. The Circuit Court of Appeals says (23 F. (2d), *supra,* at p. 453):

> "Springs Road was an old road, used from time immemorial, and maintained at the expense of the town. The taking cuts out about a half-mile of the road, but the severance will render other portions unavailable and require new roads to connect the *termini.* The facts concerning the extent of the damage need not now be stated; for it is stipulated that, if the town is entitled to recover, the amount shall be $10,000.
>
> "The Court below ruled against the town without opinion. The single question here is whether the taking by the United States, by eminent domain, of a way located in the town, entitles the town to compensation."

Reversing the District Court, and amending the decree of condemnation so as to award the $10,000, with interest, to the Town of Bedford, the Circuit Court said in its opinion (23 F. (2d), *supra,* at pp. 454-455):

> "For present purposes, a town may be regarded as a group of taxpayers, charged, *inter alia,* with the burden of building and maintaining such highways as common convenience and necessity require. Any act that increases those burdens takes additional money from that group of taxpayers. A highway once built exonerates *pro tanto* that group; taken or otherwise destroyed a new burden is imposed. **To take the furnished means of meeting a liability imposed by law has the same effect as taking property technically**

vested; loss accrues. Bedford's right in Springs road was as real a property right as a leasehold of the same land, or as an abutting owner's right of access to the street. *Rigney* v. *City of Chicago,* 102 Ill. 64; *Hart* v. *Buckner* (C.C.A.) 54 Fed. 925, 930; *Old Colony and F. R. R. Co.* vs. *Inhabitants of Plymouth County,* 14 Gray (Mass.) 155.

"* * *. Applying the reasoning of these cases to the problem before us, it is clear that the town of Bedford had a property right in this town way. The road was, as already noted, **a furnished means for the performance of a legal duty.** * * *

"But it is not—and under the stipulation herein cannot—be contended that the town is not injured by the government's taking of this way. The case, therefore, falls plainly under the protection of the Fifth Amendment. The doctrine laid down in *Monongahela Navigation Co.* vs. *United States,* 148 U. S. 312, 325, 326, is fully applicable. In that case, * * *, the Court, by MR. JUSTICE BREWER, held * * * (page 325): 'There can * * * be no doubt that the compensation must be a full and perfect equivalent for the property taken'."

Point IV

It follows, from the foregoing, that the lower courts were in error in denying compensation to the insular government for anything except the cost value [depreciated] of that portion of the distribution part of the system located within the area taken by the federal government in condemnation proceedings.

This decision of the lower courts was in conflict with the foregoing applicable decisions of this Court, and with those of the Circuit Courts of the Seventh and Eighth Circuits, as well as with the principles of the First Circuit's own earlier decision in the *Town of Bedford case* above quoted.

Point V

The interests of the insular government, for its Isabela Irrigation Service, within the lands taken over by the fed-

eral government for the Puerto Rican Air Base, may be viewed in two lights: (1) The insular government's outright ownership of that portion of its irrigation system located within the boundaries of the area thus taken by the federal government,—that part of the distribution end of its system lying within those boundaries,—rights of way, irrigation ditches or canals, delivery gates, weirs, road crossings, flume, electric power lines and transformers, etc., etc., with that part of the Aguadilla Canal especially built to feed water to the lands now taken over; and (2) The insular government's contractual—or *quasi*-contractual—interest in the irrigated lands themselves, under the land owners' acceptances [pursuant to Section 4 of "The Isabela Public Irrigation Law" Act No. 63 of 1919, Appendix, *infra*, p. 62, and kindred sections of that and subsequent Acts] of the mutual contractual obligations to receive and to pay for the water for the irrigation of the lands, and to pay the assessments for the amortization of the bonds and the maintenance and the operation of the irrigation system as a whole.

Point VI

Whether looked at in one or the other of these lights,—or in both,—in whichever light it be viewed,—the allowance to the insular government of simply the [depreciated] cost value of that portion of its own distribution equipment formerly located within the area taken over by the federal government[12], does not compensate the insular government for,—does not "make it whole" against,—either (1) the damage resulting to the balance of the irrigation system through leaving it without any profitable outlet for a substantial portion of the water it was built to collect and carry, or any means of realizing any revenue for that part of its capacity; or (2) the loss of the contractual obligations theretofore resting on the lands to take and receive

[12] And now taken over, and destroyed, by the federal government, as a result of the condemnation proceedings.

the water and pay for it, and to pay the assessments, as above indicated.

Point VII

The District Court, specifically, was in error,—and the Circuit Court of Appeals, likewise, in affirming the District Court,—in holding that this loss is (R. 49) of "a type of consequential damages not compensable".

As was pointed out by the Circuit Court of Appeals for the Eighth Circuit in *United States* v. *Chicago B. & Q. R. Co., supra,* 82 F. (2d) 131, with regard to an analogous contention there put forward on behalf of the federal government as the appellant in that case (at page 136):

> "In the light of the present well settled law, it is difficult to understand the basis for the broad contention here made; unless it arises from a confusion touching what are so called *consequential damages,* as contra-distinguished from direct or proximate damages. * * *. Ordinarily, '*consequential damages' are those which do not arise as an immediate, natural and probable result of the act done,* but arise from the interposition of an additional cause, without which the act done would have produced no harmful result; while '*proximate damages' are those which accrue directly and in natural sequence,* and as a specific (hurtful) result from the act done, *without the intervention of an independent cause.*"

Within the meaning of that definition, the loss sustained by the insular government's Isabela Irrigation Service here, was, manifestly, in the nature of "proximate damages". It resulted, necessarily and directly, from the act of the federal government in taking over these irrigated lands,—without the intervention of any other independent cause.

Point VIII

Petitioner, The People of Puerto Rico, had a legal right and duty to continue to maintain and operate the entire irrigation system, as a whole, and to continue to levy and collect the special taxes and assessments on the lands within

the irrigation district, for the purposes of repaying the moneys borrowed on the irrigation bonds issued to defray the initial cost of construction of the system, as well as for the purpose of continuing its maintenance and operation.

A. This *legal right and duty* covered the 592 acres[13] now taken by the United States in this condemnation proceeding, equally with the balance of the lands within the irrigation district. This legal right and duty constituted a *"vested right"*; a franchise. "The franchise is a vested right" (*Monongahela Nav. Co.* vs. *United States, supra,* 148 U. S. 312, 341).

B. Under the Organic Act of Congress, the so-called Jones Law, of March 2, 1917, c. 145, 39 Stat. 951, *et seq.*, and its amendments, this petitioner, the insular government, the "People of Puerto Rico", constitutes an organized Territory, an autonomous government enjoying and exercising substantially all, and the same, local governmental rights, powers and duties as do the governments of the sovereign States of the Union. *Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, 258, 261-263.

C. Under Section 3 of the Organic Act (Appendix, *infra,* pp. 55-56) the Congress expressly conferred upon the Legislature of Puerto Rico the powers, *inter alia,*

> "That * * * taxes and assessments on property, * * * may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Puerto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Puerto Rico or any municipal government therein as may be provided by law, and to protect the public credit".

And, by Sections 25 and 37 of the Organic Act (Appendix, *infra,* p 56) the Congress also expressly conferred

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[13] And likewise the 703 acres taken in the companion case. [Foot-note 3, *ante* p. 6; R. 50, 52, 56-"19"].

upon the Legislature *all local legislative powers,* in the broadest terms, providing:

> "Sec. 25. That all local legislative powers in Puerto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated 'the Legislature of Puerto Rico'.
>
> "Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate and re-organize the municipalities * * *; also the power to alter, amend, modify or repeal any and all laws and ordinances of every character now in force in Puerto Rico insofar as such alteration, amendments, modification, or repeal, may be consistent with the provisions of this Act."

D. Pursuant to these broad legislative powers thus conferred by the Congress, the Legislature of Puerto Rico, by Acts Nos. 59 and 63 of 1919 and the various amendatory and supplemental acts, created the Isabela Irrigation District and the "Isabela Irrigation Service" and authorized the issuance of the bonds now outstanding to defray the cost of construction and maintenance of the system, and the pledging of the good faith of the People of Puerto Rico to the bondholders for the repayment of the bonds. And also provided for the levying of the special taxes and assessments to meet principal and interest, and to cover the continuing costs of maintenance and operation,—and provided that the annual assesments on the property of any landowner within the district should not exceed $15.00 per acre per annum, and that the assessments should not constitute a personal liability of the land-owner. And by the later Acts of 1936, 1937, and 1941, in view of the difficulties into which the landowners, and consequently the irrigation service, had fallen, during the time of the financial depression, provided for deferring payments of assessments, dividing them into installments, and for commuting those up to June 30, 1936, and extending the time for the payment of the bal-

ance, *first* to 1941, and *then* [by the 1941 Act] *further* up to 1951, and for the levying in the meantime, during those periods of suspension of the full payments, of a fixed special tax of only $1.00 per acre on the lands within the district, *plus* payment for water actually used (Appendix, *infra*, pp. 91-92, 98-101; *ante*, pp. 7-8). *But there has never been any release of any of the lands within the district from their ultimate obligation to pay their fair share of the cost of construction and maintenance of the system*, and for the repayment of the bonds issued for those purposes, subject only to the condition originally provided that no annual assessment shall be in excess of $15.00 per acre, [and to the suspensions above noted, up to 1951].

E. These Acts of the Legislature, and the creation of the irrigation district, the construction of the facilities necessary for carrying out the purposes of irrigating the lands within the district, and the issuance and sale of the bonds carrying the good faith of The People of Puerto Rico, thus created *a legal right and duty* on the part of the People of Puerto Rico, this petitioner, to continue administratively,—without the need of any new legislation [or the right to affect it by any new legislation, in view of the pledge contained in the original Act No. 59 of 1919, Sec. 8; Appendix, *infra*, pp. 59-60],—to levy the special taxes and assessments and to collect them, for the mutual benefit, in their proportionate shares, of all the landowners within the district, and of the bond-holders, for the purposes of paying off the bonds and of maintaining and operating the irrigation service.

Point IX

The insular government, The People of Puerto Rico, has the undoubted power to levy special taxes and assessments on property to be specially benefited thereby. Gallardo vs. Porto Rico Ry. Light & Power Co., 18 F. (2d) 918, 923-925 [C.C.A.-I].

Point X

Since this petitioner, The People of Puerto Rico, possessed the legal right, and duty, to continue to operate the entire system as an integrated whole, and to continue to levy these special taxes and assessments on the lands in the irrigation district,—including the 592 acres now taken away from the district by the United States by these condemnation proceedings,—the District Court was mistaken in holding (R. 49; ante, pp. 8-9) that the injury done to petitioner by breaking into the use of the system, as a whole, and by depriving it of the income from these 592 acres, was damnum absque injuria, or speculative, like the loss of patronage, for example, of a telephone company when lands of its subscribers are condemned.

This loss by the petitioner in the present case is of a wholly different character. It was a loss of the usefulness of a substantial portion of its system, and a deprivation of income to which it was legally entitled, and which it was its legal duty to collect. A loss of a "vested right"; of a "franchise." (*Confer, Monongahela Navigation Co.* vs. *United States, supra,* 148 U. S. 313, 341).

Point XI

The cases relied on by the Circuit Court of Appeals and the District Court are not to the contrary of the foregoing.

A. The Circuit Court of Appeals (R. 67-68; 134 F. (2d) at pp. 272-273), as well as the District Court (R. 49), apparently misunderstood and misapplied the decision of this Court in *Mullen Benevolent Corporation* v. *United States, supra,* 290 U. S. 89 (*ante,* pp. 8-9, 11-12, 22, 23) affirming the decision of the Circuit Court of Appeals for the Ninth Circuit in the same case (63 F. (2d) 48). Both of the lower courts treated that case as authority for holding that, as the District Court phrased it in its opinion (R. 49, *supra*):

"Insofar as loss of future assessments is concerned,

the case is like the loss of bondholders upon condemnation by the United States of lands to which they look for assessments to pay the bonds, which type of loss has been held to be non-compensable. (See *John K. and C. Mullen Benevolent Corp.* v. *United States,* 280 U. S. 89)."

B. Plainly, that is a misunderstanding and misconstruction of this Court's decision in that case.

C. This Court, in that case, held only, as we understand it, as did also the Circuit Court of Appeals for the Ninth Circuit [63 F. (2d), *supra,* 48, 50-56] whose decision was affirmed by this Court,—*that there must be some presently existing interest in the land in the nature of a present property interest,*—in order to constitute a "compensable claim" in condemnation proceedings; and that, accordingly, *where there is no presently existing liability or lien or charge of any kind* in favor of the claimant at the time of the taking of the land in the condemnation proceedings, and *no direct legal obligation or personal liability* at that time on the part of the organization issuing the bonds, the payment of which is to be discharged from the proceeds of the liability or charge or lien on the land, then, in such case, there is no compensable claim.

D. We have no quarrel whatever with that rule. That case fully supports our claim here, where there are:

First, direct ownership of a single entire property, the integrated Isabela Irrigation System, a part of which is actually taken [a part of the distribution equipment], and damage is also inflicted on the functioning of the balance of the system as a whole; and,

Second, as to the lands of the individual landholders in the Irrigation District, lying within the area taken over, there are also both (a) a direct absolute obligation on the bonds, for the payment of which "the good faith of The People of Puerto Rico is irrevocably pledged", and a *"continuous appropriation"* was made in the Acts authorizing their issue, *"and no further appropriation for such purpose shall be required"* (Act No. 59 of 1919 [Sec. 8]; "Joint

Res." of July 3, 1929 [Sec. 9]; Appendix, *infra*, pp. 59-60, 83); and also (b) a *presently* existing *charge or liability* on the lands, at and prior to the time of the beginning of the condemnation proceedings (*ante*, pp. 36-39; and *infra*, pp. 50-52).

E. In the *Mullen Benevolent Corporation* case it appears from the statements of the facts contained in the opinions both of the Circuit Court of Appeals and of this Court, that the irrigation bonds issued by the City of American Falls, Idaho, were expressly made *not* direct obligations of the city, or of its citizens or taxpayers in any way.[14] Pursuant to the statutes of Idaho the legislative authorities of the city (then village) of American Falls passed ordinances providing for the issuance of the bonds and for the levy and collection of special assessments to pay them off and making them a lien upon the lands in the district. The full amount provided by those ordinances was paid, so that they no longer constituted any charge upon the land.

But it appeared that, through some error in the original ordinances, those assessments had not been made big enough completely to amortize the bonds and interest; so that, *after the collection in full of all of those assessments*, there still remained a balance unpaid to the bondholders. As to that balance there was no legal obligation or lien on the part of anybody or any property whatever, because of the express provision in the bonds releasing the city and its taxpayers from any personal liability for their payment and of

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[14] The bonds contained the provision that (*United States* vs. *John K. and Catherine S. Mullen Benevolent Corp.*, *supra*, 63 F. (2d) at p. 49):

> "The holder of any bond issued under the authority of this chapter shall have no claim therefor against the city, town or village by which the same is issued in any event, except for the collection of the special assessment made, for the work of improvement for which said bond was issued, but this remedy, in case of nonpayment, shall be confined to the enforcement of such assessment."

the fact that all of the assessments provided for in the original ordinance had been collected in full, so that no lien or legal charge or contractual liability of any kind remained on any of the land. There was of course, however, a *moral obligation* on the part of the city to see that the bondholders did not lose money through their purchase of the city's bonds, and accordingly, pursuant to statutes of the State of Idaho authorizing such action in case of such a mistake, the city council proceeded, *after the land had been taken over by the condemnation proceedings*, to enact "Ordinances 122, 123, and 124", levying what was called "a reassessment of benefits" upon the lands within the original districts, including that portion of the land that had already been taken over by the federal government in the condemnation proceedings. Of course, plainly,—[and it was apparently so admitted by everyone, all through those proceedings],—that action of the city council levying such "reassessment of benefits" *after the federal government had taken possession,* was simply void in so far as it related to the land then owned by the federal government. The bondholders, however, brought suit under the "Tucker Act" on the apparent theory that the *moral obligation* of the city to pay the unpaid balance on the bonds should be recognized and enforced, since the federal government's proceedings had frustrated the creation of the lien which otherwise would have been created by the city council's "reassessment of benefits".

In the opinions both of the Circuit Court of Appeals and of this Court, the whole case turned upon the question whether or not, under the Idaho statutes, there was, at the time the land was taken over in the condemnation proceedings, any presently existing lien or charge upon it for the payment of plaintiff's claim. It was held that there was no such lien or other liability in existence at that time; since all of the assessments levied under the original ordinance had been paid in full; *and since the new exercise of the legislative authority* of the city,—granted to it by the statutes of Idaho,

to make a reassessment of benefits and to levy new assessmens in the case of error or mistake in the original assessment,—*was not exercised until after the land had passed into the ownership of the United States;* and since, after that event, "no such lien could come into being without the consent of the federal government after it took title."

F. The *Mullen Benevolent Corporation* case is therefore the direct opposite of the present case, in two outstanding respects: (a) There, the bonds carried no direct obligation of the issuing authority, the City of American Falls; whereas, here, the bonds are the direct obligations of The People of Puerto Rico for the payment of which the good faith of The People is irrevocably pledged; and (b) THERE, all of the assessments contemplated by the original ordinance, and for which a lien was given on the lands within the district, had been fully paid and discharged; *and the claim of the bondholders* for their unpaid balance *was based wholly upon new legislative action* taken by the city, purporting to create a new series of assessments on the "reassessment of benefits", *after* the land had already passed into the ownership of the federal government; WHEREAS HERE the liability of the lands for the payment of the special taxes and assessments falling due in the future under the Isabela Irrigation Act rests wholly upon legislative action validly taken by the Legislature of Puerto Rico *before* the condemnation proceedings were begun, so that the liability was actually in existence at the time of the taking.

And continuing provision had been made for the levying (Act No. 63, Sec. 29, as amended by the "Joint Resolution" of July 3, 1929, and the Act of May 15, 1934; Appendix, *infra*, pp. 65-69, 84-90) of the annual assessments each year by the Treasurer of Puerto Rico in a manner definitely determined by the Legislature, so that, as the Circuit Court of Appeals itself says (R. 66; *ante*, p. 10), the annual levy is a "purely ministerial" duty, enforceable by *mandamus* or other proper judicial procedure.

G. Hence, all of the assessments, both those heretofore lev-

ied, as well as the amount of those to be levied by the Treasurer in the future in carrying out such ministerial duty, until the bonds are fully paid, constituted, at the time these condemnation proceedings were begun, a then presently existing continuing charge and liability on the land,—[whether or not then, technically, a "lien; in any event a direct presently existing liability—contractual or *quasi* contractual; a presently existing *property interest* in the lands],—in accordance with the provisions to that effect in Section 29 of the original Irrigation Act No. 63 of 1919, and its amendments of July 3, 1929, and May 15, 1934, *supra* (Appendix, *infra,* pp. 65-69, 84-90).

H. As already noted (Petition, *ante,* pp. 7-8), while the annual levying of these assessments was *suspended* by Section 1 of the Act of May 12, 1936 until June 30, 1941, and again *suspended* by Section 2 of the Act of May 14, 1941 until June 30, 1951, yet there is nothing in either of those suspensions in any way releasing or changing the liability of the lands for the assessments, or the ministerial duty of the Treasurer to levy them again, beginning June 30, 1951, under the original acts of 1919 and their subsequent modifications above noted; and, in the meantime, a like liability ("lien") was created by such Acts of 1936 and 1941 for the *interim* "special taxes" of $1.00 per acre to be levied during the suspension, until June 30, 1951.

I. In view of that then presently existing liability of the lands for these charges, both the assessments and the "special taxes", the claim of this petitioner for the damages caused to it by the loss of the fruits of this liability, through the taking over of 592 acres of the lands upon which it rested [and 703 acres more, in the companion case], is plainly a "compensable claim".

POINT XII

No double compensation is being asked by the People of Puerto Rico.

A. The District Court as above indicated (*ante*, p. 14) was under the mistaken impression that the insular government was asking double compensation for its loss. The District Court said in its opinion (R. 49-50):

> "It is difficult to understand the alleged measure of these damages as expounded by claimant. By the stipulation of the parties it is agreed that claimant has already been paid the fair value of the distribution system located on the lands taken and full compensation for the taking of it. * * *. Claimant would not have been entitled to greater compensation than that; as to said part of its distribution system it has been made whole. The total amount paid was $64,393.07. Undoubtedly, this amount represents the cost of reconstruction new less accrued depreciation as of the date of taking. Yet claimant asserts that the estimated cost of a new distribution system for an equivalent area of land, less accrued depreciation for a like number of years less the total amount of compensation paid, would be $114,716.00. Claimant must contemplate a different kind of distribution system than that located on the lands taken, or it was mistaken as to the fair value of the system located on the lands taken. Or perhaps the cost of the new system contemplated was calculated as of a time other than the date of taking.
>
> "What claimant is asking is that it be paid the fair value of that part of its distribution system located on the land taken and that it be paid also the cost of constructing another distribution system in a different land area. It is not entitled to both."

The Circuit Court of Appeals, quoting the substance of this paragraph of the District Court's opinion, says (R. 62; 134 F. (2d), at p. 270) that it

"effectively disposed of the contention that the People of Puerto Rico is entitled to compensation for the cost of readjusting the irrigation system".

B. The errors of the lower courts in this holding are believed plain:

(1) It ignores the essential basis of the insular government's claim for compensation here; which is, to be made whole against the damage done to it by breaking into the functioning of its coordinated irrigation service, and destroying *pro tanto* its ability to carry on the functions for which the system was constructed and decreasing *pro tanto* its earning power from assessments on the irrigated lands and from sales of water and of electric light and power to enable it to amortize its bonds and to maintain the functioning of the system.

The amount of these damages has nothing to do relatively, or by any comparison of amounts, with the amount of the cost, or of the cost value, of the structures and equipment formerly owned by the insular government within the boundaries of the area of lands which have been taken over by the federal government in these condemnation proceedings.

Those structures and that equipment,—which formerly constituted the portion of the distribution system of the Isabela Irrigation Service located on those lands,—have now likewise been taken over by the federal government, and have been destroyed. They have been paid for by the federal government under the stipulation (R. 29, 33-34) to which reference is made in the above quoted paragraph of the District Court's opinion ["Deficiency Judgment", February 28, 1942 (R. 37-38)].

But the relative amount of that judgment, covering the cost of the tangible property actually taken over and destroyed by the federal government, does not necessarily have anything whatever to do with the amount of the damage done to The People of Puerto Rico by injuring the efficiency of its irrigation system as an integrated

whole,—whether looked at from the standpoint (a) of the injury to its efficiency in carrying out the functions for which it was built, or (b) to the injury to its earning power, or (c) to the cost of relocating a part of it so as to restore its operating efficiency. [See the cases above quoted, particularly *United States* v. *Grizzard, supra,* 219 U. S. 180, 183-184; *United States* vs. *Miller,* 317 U. S. 369, 376, *supra; United States* v. *Welch, supra;* 217 U. S. 333,—; *Monongahela Navigation Co.* v. *United States, supra,* 148 U. S. 312, 328-330, 341-345; and the *Chicago, Burlington and Quincy Railroad cases* (*United States* v. *C. B. and Q. R. Co., supra,* 82 F. (2d) 131, 134-139, 140, and *United States* v. *C. B. and Q. R. Co., supra,* 90 F. (2d), 161, 167-171),—as well as the *Wheeler Township case,* upholding the right of the township to recover the amount of the cost of relocating its highways to accord with the raised levels of the Lake of the Woods, regardless of the original cost of the township roads at the lower levels (*United States* v. *Wheeler Township, supra,* 66 F. (2d) 977, 982-985); and the *Town of Bedford case* where the first Circuit Court itself allowed the Town the $10,000 resulting damage done it by severing a short portion of a highway taken over for a United States Veterans' Hospital, because of the necessarily resulting cost of relocating other portions of the roads and of building new roads to connect *termini* (regardless of the small money value of the part of the road actually taken over) *Town of Bedford* v. *United States, supra,* 23 F. (2d), 453, 454-457.]

(2) It fails to bear in mind that the cost of building a new distribution system today on the same area of land,—592 acres,—would necessarily be very considerably higher than the cost of building the same distribution system twelve years ago in the early days of the financial depression.

The Court will take judicial notice that costs of every kind have risen very materially,— wages and salaries; prices of materials; ocean freights; local transportation costs; everything. The topography of no two tracts of

similar acreage can possibly be the same. The cost of building a distribution system on an adjoining tract, to utilize the full capacity of the upper works to gather and to bring down the amount of water they were constructed to carry,—and so to make whole the loss inflicted on the system as a whole,—is a practical engineering problem.

The District Court should therefore have been willing to hear evidence upon it in support of the insular government's contention; and should not have disposed of it summarily by *a priori* reasoning, as it did in the paragraph of its opinion above quoted (R. 50, *supra*).

Point XIII

Measure of Damages

The amount, or measure, or method of calculating, the damages to the irrigation system may be looked at from several view points, both from the standpoint of who should bear them, and from the standpoint of how the amount should be calculated.

A. *As to who should bear the damages*: Should they be assessed against the United States, or against the interests of the former land owners in the award; or should they be distributed, or allocated, between the United States and the land owners?

B. *The rule in ordinary cases is,* of course, that in condemnation proceedings the federal government (or any other condemnor) is to be adjudged to pay into court the full fair value of all the property taken over; and, having done so, is discharged of money liability to the former owners of the property, and the fund thus realized is to be distributed among the former owners as their respective interests may appear,—the condemnor having no interest in that question. This is the general rule stated by the Circuit Court of Appeals in its opinion (R. 64; 134 F. (2d) at p. 271) and in the authorities there cited.

C. *But there are exceptions to that rule* in those un-

usual cases where the taking results in damage beyond the amount of the value of the physical property actually taken over,—such for example as the *Grizzard case, supra,* and the *Chicago, Burlington and Quincy Railroad cases,* and the *Wheeler Township case,* and the *Town of Bedford case* above quoted (*ante,* pp. 27-34, 48).

D. **As to the measure, or method of calculating, the damages.**—That may be either on the basis of: (a) The cost of building a countervailing distribution system on an equivalent acreage, as was suggested to the District Court; (b) The present worth or value of the liabilities of the acreage taken away; or (c) The proportion of the entire bonded indebtedness which the subtracted acreage bore to the entire irrigated acreage in the District.

The method or measure, and the amount, of the damages should be determined by the District Court, and this case should go back to that Court for that purpose.

Point XIV

The liabilities of the individual landowners of lands located within that portion of the irrigated district taken over by the Federal Government in these proceedings.

A. These lands were subject to a liability,—contractual, or *quasi-contractual,*—for their proportionate shares of the cost of the construction of the entire irrigation system and of its current maintenance and operation at the full capacity for which it was built. That liability was to be discharged in due course by the payments of the assessments and special taxes for the amortization of the bonds and for defraying the current costs of maintenance and operation.

B. That liability [as it stood before the institution of the condemnation proceedings by the federal government] was reflected, in effect, by a subtraction from what would otherwise have been the market value of the lands as they then stood, with their availability for irrigation. The market value, as it then stood, may be regarded as having

been composed of three separate factors, viz.: (1) The market value of the lands in their natural condition, without irrigation; (2) The added value given to the lands by availability for irrigation, without considering irrigation costs—[that is to say, considering the whole irrigation system as completely paid for, in full, and the cost of its current operation and maintenance defrayed by receipts from sales of electric light and power, and of water to parties outside of the irrigated district, so that the irrigation system had become a clear asset to the owners of the irrigated lands within the district]; LESS (3) A subtraction, from the sum of "(1)" "(2)" above, of a factor representing the liabilities of the lands to pay off in due course, by payment of the regular assessments and special taxes as they should fall due, the cost of the construction of the whole system (by amortizing the bonds, principal and interest), and the current costs of maintenance and operation of the whole system (until such time as sales of electric light and power, and of water to parties outside of the irrigated district, might become sufficient to carry all of these costs, and leave the irrigation system as a net clear asset for the owners of the lands within the district).

C. When the federal government's condemnation proceedings broke into the operation of the system and took away a portion of the irrigated lands in the district, it may be regarded as having in effect *matured the liabilities* of the respective lands for their shares of the foregoing charges, so that the lands thus affected should be charged, equitably, with the then *present value or present worth* of their liabilities on those accounts.

D. It results that, in distributing the amount deposited or afterwards paid or found to be payable by the United States in the condemnation proceedings, in determining the amounts of the awards to the respective landholders within the district, *this factor of the liability of the lands for their shares* of the costs of construction and of maintenance and operation of the whole irrigation system

should have been taken into account, as a deduction from the market value of the lands. And that, therefore,

E. The District Court erred in allowing,—as it apparently did, as indicated by the stipulation (R. 55; *ante*, pp. 4-5),—to the landowners *the full value of their lands with the added factor* [what we have called "(2)" above] of their *"availability of irrigation"*, but *without any deduction on account of their liabilities above indicated* [what we have called "(3) above]; and that

F. The District Court should, in distributing the awards, have allowed to the insular government the amount of that factor,—"(3)" above,—of the present worth or present value of those liabilities of the lands taken over within the district, as one element of its "just compensation" for the injuries done to the irrigation system as a whole, and in order to aid it, as above indicated, in the amortization of the outstanding bonds, or else toward the expense of extending its distribution service to other available lands so as once more to utilize the normal capacity of the upper works of the whole system.

G. What the amounts of such allowances should be,—and how much, relatively, of the entire amount of the compensation to the insular government for the general injuries caused it,—should be charged against the individual landowners on account of these liabilities,—and how much should be charged directly to the condemnor, the United States Government as damages over and above the market value of the lands and of the local distribution equipment actually taken over [15], is a matter of accounting, for which this case should go back to the District Court.

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[15] As was done, for example, in the two *Chicago, Burlington and Quincy Railroad Company* cases, and in the *Wheeler Township* and the *Town of Bedford* cases, and as this Court held proper, in the *Grizzard* case, as well as in the *Monongahela Navigation Company* case [*ante*, pp. 27-34].

CONCLUSION

For all the foregoing reasons, the District Court erred in denying compensation to the insular government for the general damages to its Isabela Irrigation System as an integrated whole, in addition to the depreciated actual cost value of that portion of its distribution equipment located in the area of the lands actually taken over by the federal government; and erred also in not going ahead in the same proceeding to evaluate and to award to the insular government, as part of its compensation for the general injuries to the irrigation system as a whole, the present worth or present value of the liabilities of the lands taken over for their respective shares of the costs of the construction of the whole system and of its current maintenance and upkeep, for which the insular government, as well as the other landholders within the entire irrigation district are irrevocably liable to the bondholders; and the Circuit Court of Appeals erred in affirming the judgment of the District Court.

Accordingly the writ of certiorari should issue, for the reasons stated in the Petition (*ante*, pp. 23-24), and the judgments of the Circuit Court of Appeals and of the District Court should be reversed, and this case remanded to the District Court for further proceedings.

Respectfully submitted,

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Acting Attorney General for Puerto Rico,
of Counsel.

APPENDIX

Statutory Provisions

Constitution:

Fifth Amendment

No person shall be held * * *; nor shall private property be taken for public use, without just compensation.

Federal:

The Organic Act for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951:

Section 3.—(*As amended by Act of Congress, approved August 26, 1937.*)—That no export duties shall be levied or collected on exports from Puerto Rico, but taxes and assessments on property, income taxes, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Puerto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Puerto Rico or any municipal government therein as may be provided by law, and to protect the public credit: *Provided, however,* That no public indebtedness of Puerto Rico and the municipalities of San Juan, Ponce and Mayaguez shall be allowed in excess of 10 per centum of the aggregate tax valuation of its property, and no public indebtedness of any other subdivision or municipality of Puerto Rico shall hereafter be allowed in excess of 5 per centum of the aggregate tax valuation of the property in any such subdivision or municipality, and all bonds issued by the government of Puerto Rico, or by its authority, shall be exempt from taxation by the Government of the United States, or by the government of Puerto Rico or of any political or municipal subdivision thereof, or by and State, Territory, or possession, or by any county, municipality, or other municipal subdivision of any State, Territory, or possession of the United States or by the District of Columbia. In computing the indebtedness of the people of Puerto Rico, municipal bonds for the payment of

interest and principal of which the good faith of the people of Puerto Rico has heretofore been pledged and bonds issued by the people of Puerto Rico secured by bonds to an equivalent amount of bonds of municipal corporations or school boards of Puerto Rico shall not be counted, but all bonds hereafter issued by any municipality or subdivision within the 5 per centum hereby authorized for which the good faith of the people of Puerto Rico is pledged shall be counted. * * *

Section 25—That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".

Section 37.—That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * *.

PUERTO RICO:

Act No. 59, approved June 18, 1919; Laws of 1919, pp. 320-328.

AN ACT

To authorize the issuance by the Insular Government of Porto Rico of Bonds for an amount not exceeding three million (3,000,000) dollars, and for other purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1.—For the purpose of providing funds sufficient for the construction of a system of irrigation in Porto Rico for the district lying approximately between the Guajataca river on the east and the town of Aguadilla on the west, as provided for in the act entitled the "Isabela Public Irrigation Law," and for the purpose of advancing the funds provided by the aforesaid act, the Treasurer of Porto Rico is hereby authorized, empowered and directed to issue bonds of The People of Porto Rico to an amount not exceeding three million (3,000,000) dollars.

Section 2.—Should the proceeds of the special assessment as provided for in the act above mentioned (section 29), be insufficient in any year to meet the entire amount of the payment of the principal on outstanding bonds falling due that year in addition to the other necessary payments, as provided in the aforesaid act, then the Treasurer of Porto Rico may, with the approval of the Governor, further issue refunding bonds to the amount necessary to pay the principal falling due during the said year, less the amount of thirty thousand (30,000) dollars assessable under the provisions of the aforesaid act (section 29); *And provided, further,* That should no tax be paid on lands in the temporary or permanent irrigation district during any year as provided for in sections 24 and 29 of the above-mentioned act, or should the amount received from taxes upon the lands in the said district be so reduced because of the operation of the said sections as to require it, then the Treasurer of Porto Rico may, with the approval of the Governor, issue such additional bonds as may be necessary to cover all expenses and to meet all the obligations of the irrigation system for the said year; *Provided,* That the total amount of such additional bonds, issued to cover expenses and to meet obligations of the irrigation system during any year or years in which in accordance with the provisions of sections 24 and 29 of the aforesaid act, no tax is paid on lands in the said irrigation district, in which the amount received from taxes is insufficient to meet the said expenses and obligations of the irrigation system, shall not at any time exceed the total amount of irrigation bonds previously authorized.

Section 3.—The said bonds shall be sold on such terms as are most favorable to The People of Porto Rico and at such times and in such amounts as the Treasurer of Porto Rico may, with the approval of the Governor, determine.

Section 4.—The said bonds may be in coupon or registered form or both, and the coupon bonds may be made exchangeable for registered bonds under such regulations as may be prescribed thereon. The bonds may be in any or all of the following denominations:

One thousand (1,000) dollars, five thousand (5,000) dollars, ten thousand (10,000) dollars. They shall bear interest at a rate not to exceed four and one-half (4½) per cent per annum, which interest shall be payable semi-annually on the first day of each January and July. The bonds shall be divided into series for payment. The series shall be indicated by a serial letter on each bond, and they shall be redeemable and payable as follows:

The said bonds shall mature in the order of their issuance. Seventy-five thousand (75,000) dollars thereof shall mature on January 1, 1925, and an equal amount on the first day of each succeeding year thereafter until the full amount shall have been paid; but any or all of the said bonds maturing after January 1, 1935, may be redeemed at the option of The People of Porto Rico, on or after January 1, 1935, on any interest-paying day, at five per cent above par, and interest accrued thereon, by giving six months' notice in such manner as may be prescribed by the Treasurer of Porto Rico. In case of partial redemption the bonds to be redeemed shall be determined pursuant to such method as the Treasurer of Porto Rico may prescribe. Both principal and interest shall be payable either at the Treasury of the United States or in Porto Rico at the office of the Treasury of Porto Rico, or at the office of the fiscal agent of the Government of Porto Rico, appointed therefor in the United States, as the Treasurer of Porto Rico may, with the approval of the Governor, determine in gold coin of the United States of the present standard of weight and fineness.

Section 5.— The said bonds may be sold by the Secretary of War of the United States or by the Treasurer of Porto Rico or by any fiscal agent appointed for that purpose by the Treasurer of Porto Rico, with the approval of the Governor of Porto Rico, upon such terms as are most favorable to The People of Porto Rico and as near to the dates of their issuance as is practicable. The proceeds from their sale shall be deposited with an authorized depositary of the Government of Porto Rico to be designated by the Treasurer of Porto Rico.

The Treasurer of Porto Rico, with the approval of the Governor, shall have entire charge and authority within the limitations herein prescribed, in respect to

all matters relating to the said bonds, including the terms and denominations thereof, the manner, time and method of the issue and sale thereof, subject to the limitations herein provided and shall take all action necessary for the complete carrying out of the provisions of this Act, and may provide for the issuance, pending the preparation of definitive bonds, of interim bonds or certificates.

Section 6.—That in accordance with the provisions of Section 3 of the Act of Congress entitled "An Act to provide a civil government for Porto Rico, and for other purposes," approved the second day of March, nineteen hundred and seventeen, the bonds herein authorized to be issued shall be exempt from taxation by the Government of the United States, or by the Government of Porto Rico or of any political or municipal subdivision thereof, or by any State, or by any county, municipality or other municipal subdivision of any State or Territory of the United States, or by the District of Columbia.

Section 7.—The proceeds of the sale of said bonds shall be devoted to the construction of the system of irrigation provided for by and in accordance with the terms of the Act of the Legislature, entitled the "Isabela Public Irrigation Law," and for the payment of the interest on the said bonds during the period of construction and for the payment of operation and maintenance of the aforesaid irrigation system, until such time as the funds necessary for these purposes may be produced from the taxes levied as hereinbefore provided. The expense of the construction of said irrigation system shall include all of the cost of the preliminary surveys made in the determination of the final plans for the system; and any work performed under the provisions of the special appropriation from Insular revenues, which by the terms thereof are repayable to Insular revenues, and all expenses and payments of whatever nature incurred under the provisions of the acts above mentioned.

Section 8.—That for the payment of the interest on the said bonds, as it falls due, and the payment of the principal, the good faith of The People of Porto Rico is hereby irrevocably pledged; and to the payment of the said interest and principal of the said bonds there

shall be devoted the revenues derived from assessments levied upon the lands included in the district as provided in the Isabela Public Irrigation Law.

The foregoing provisions regarding the payment of interest on the said bonds and the payment of the principal, shall be deemed to be in the nature of a continuous appropriation and be sufficient authorization to the Treasurer of Porto Rico to make such payments, and no further appropriation for such purpose shall be required. Such payments, however, shall be made upon the warrants of the Auditor of Porto Rico, countersigned by the Governor of Porto Rico, in accordance with the law. The bonds herein authorized to be issued and the obligations thereby created, shall not be impaired by any act or resolution of the Legislature of Porto Rico subsequently approved, or by any interpretation of any act or growing out of the development of the irrigation system herein issued and sold, shall constitute a legal and binding obligation of the Government of Porto Rico until duly redeemed and paid.

Section 9.—The legal and beneficial title to all property acquired by grant, judicial proceedings, purchase, construction or from any other source and of every character in any way connected with or growing out of the development of the irrigation system herein contemplated, shall be in The People of Porto Rico for the full period of time in which The People of Porto Rico shall under the terms of this Act be liable, and the credit of The People of Porto Rico pledged for the payment of the bonds, or any part thereof or of the interest thereon. Upon the cancellation and redemption of the last of said bonds, and the extinction of the liability of The People of Porto Rico thereon and in perpetuity thereafter, the legal title to everything appertaining to said irrigation system shall continue to be in The People of Porto Rico; but the same shall be held in trust for the benefit of the owners of the lands upon which is imposed by law the burden of paying for the benefits conferred by said irrigation system, and of the successors in title of said lands, the purpose and object of this provision being that The People of Porto Rico shall be secured at all times while their credit is so pledged up to the time of extinction of all liability as aforesaid; *Provided, however,*

That any water power or plant developed in the manner provided in the act hereinbefore mentioned in connection with the construction of said irrigation system shall be governed as to permanent ownership thereof by the provisions of said act.

Section 10.—All laws and parts of laws in conflict herewith are hereby repealed.

Section 11.—That this Act shall take effect ninety days after its approval.

Act No. 63, approved June 19, 1919; Laws of 1919, pp. 348-396.

AN ACT

Providing for the construction of an irrigation system in the vicinity of Isabela and Aguadilla; for the formation of a temporary and permanent irrigation district, and revenues derived therefrom; for the temporary appropriation of two hundred thousand (200,000) dollars to begin such work, and for other purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1.—The sum of two hundred thousand (200,000) dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated for the purpose of carrying to completion the preparation of plans and specifications for the construction of an irrigation system for the district situated approximately between the Guajataca river on the east and the town of Aguadilla on the west, including the irrigable lands in the municipalities of Isabela, Moca and Aguadilla, and for the commencement and prosecution of the work of construction thereof, and expenses connected therewith until such time as sufficient funds shall be available in the Treasury from the sale of the bonds provided for such purpose by legislative enactment.

Section 2.—So much of the said amount of two hundred thousand (200,000) dollars herein appropriated as shall have been paid out or contracted to be paid out under said appropriation, shall be repaid into the Treasury of Porto Rico with interest at four (4) per

cent out of the funds coming into the hands of the Treasurer from the sale of bonds hereinbefore mentioned, which said sums shall be charged to the account of said irrigation project to be treated as a component part thereof, so that the same may be included in the plan provided by law for the repayment by assessment and collection of taxes upon the lands benefited as herein provided.

Section 3.—The proceeds of the sale of the bonds and all moneys accruing by reason of assessments of taxes and sale of water and power within the temporary and permanent irrigation districts hereinafter provided for, shall, subject to the provisions of section 34 of this Act, be deposited in the Treasury of Porto Rico, in a trust fund to be known as the "Isabela Irrigation Fund," which fund may be subdivided for statistical purposes as the Auditor may prescribe.

All expenditures for the construction and maintenance of the irrigation system, and all payments of interest and principal of any debt incurred for the construction of the said system, shall be payable from the said trust fund, and such payments and disbursements shall be made by the Treasurer in accordance with law.

Section 4.—This Act shall not take effect until the Commissioner of the Interior shall submit to the Executive Council of Porto Rico satisfactory evidence that the owners of at least ten thousand (10,000) acres of irrigable lands situated in the municipalities of Isabela, Aguadilla and Moca, have signified their consent to have such lands included in the irrigation districts provided by this Act, and that at least two-thirds of the landholders affected by this Act have given their consent to the levying of the special tax imposed hereunder. The Commissioner of the Interior shall then proceed to the completion of the plans and specifications, attaching thereto a descriptive memorial of the works and showing and justifying, in full, all necessary work to be done and expenses to be incurred in the construction of the said irrigation system, and shall submit the same to the Director of the United States Reclamation Service, but in the event of his inability to so act, to one or more engineers selected by him; *Provided,* That the said director or the en-

gineer or engineers selected by him shall transmit a general specific report to the Governor of Porto Rico touching all matters contained in the memorial and plans and specifications of the Commissioner of the Interior. And the Governor, immediately upon the receipt of said report, shall submit the same for approval to a joint commission to consist of three members of the Senate elected by it and of three members elected by the House from among its own members.

Section 5.—The Commissioner of the Interior is hereby authorized to employ a competent irrigation engineer, and such assistants as may be necessary.

Section 6.—Upon the approval of the plans the Commissioner of the Interior shall proceed with the construction of the work either by contract or by administration, or in part by contract and in part by administration, whichever may in his judgment best serve the interest of The People of Porto Rico. In case that the Commissioner of the Interior should decided that the work either as a whole or in part should be done by contract, he shall provide for letting the construction of the work, or parts thereof, either as a whole or in parts. The said contract or contracts shall be awarded after due call for bids, advertised both in the Island of Porto Rico and the United States; *Provided, however,* That the Commissioner of the Interior reserve the right to reject any or all bids.

Section 11.—Upon the completion of the whole or any part of the irrigation system, the Commissioner of the Interior shall provide for its maintenance and administration and shall make and award all necessary contracts and make the necessary by-laws, rules and regulations for patroling and for the disposition and delivery of the water in the temporary and permanent irrigation districts.

Section 28.—In the determination of what lands are to be included in the said permanent irrigation district, the decision of the said Irrigation Commission shall be considered *prima facie* true and correct. Any person or persons, however, including The People of Porto Rico, claiming to be aggrieved by any decision of the said Irrigation Commission as to the inclusion or exclusion of any land in or from the said permanent irrigation district, shall have ninety days, and no

longer, from and after the date of the beginning of the permanent irrigation district, as hereinbefore provided, within which time to file in the office of the secretary of the District Court of San Juan a statement of the facts upon which such grievance is based. The District Court of San Juan shall set a time, as soon as may be thereafter, for a general hearing upon all of the questions of such grievances in one proceeding, and shall hear all such complaints filed in such court, respectively, together in one proceeding. The parties so claiming to have been aggrieved shall have the right, as in any ordinary civil proceeding, to procure the attendance of witnesses, and on behalf of The People of Porto Rico the Commissioner of the Interior shall have the same right. The district court shall hear and determine the matters so presented and give judgment as in a civil action, confirming, modifying or reversing the findings of the Irrigation Commission thereon. From the judgment so entered by the district court appeals shall lie to the Supreme Court of Porto Rico for the reviewing of those controversies in which the parties claiming to be aggrieved by the judgment of the said district court shall have given notice within thirty days after the filing of judgment therein that they appeal therefrom. Such an appeal may be taken by The People of Porto Rico and by any one or more of the complainants whose grievances were determined by the said district court. In case there is more than one appeal from the said district court, the said Supreme Court shall consolidate and hear the same as a single appeal. The said Supreme Court shall render final and conclusive judgment upon all of the said controversies; in the said appeals any of the parties affected by said judgments, including The People of Porto Rico, shall be entitled to be heard for the purpose of securing a revision by the said Supreme Court of the judgment of the said district court for error of law or finding of fact, the said hearings in the said district court and the said appeals to the said Supreme Court to be in the nature of a special proceeding in which the said courts, respectively, shall hear and determine the controversies of the various parties without formality and upon such special rules of pro-

cedure as shall be provided and fixed by the said courts, respectively, and the said courts shall give public notice of the dates upon which hearings are to be held, at least thirty days in advance of the dates thereof. The appeals to the said Supreme Court shall be deemed emergency matters which shall have preference on the calendar of the said Supreme Court over all other controversies whatsoever except appeals, pending in felony cases; in the matter of notice, record and all other features of the said procedure, the said Supreme Court shall adopt such rules and regulations as it shall deem sufficient to do substantial justice to all the parties concerned, and the said Supreme Court may call for additional testimony or evidence whenever in its opinion the same is necessary to enable the said Supreme Court properly to review any finding of fact. At any time up to within fifteen days of the date set for the hearing of such appeals in the said district court or in the said Supreme Court, the owner or owners of land, or The People of Porto Rico, shall have a right to join in and be heard upon such appeal, and any owner of land, or The People of Porto Rico, shall have a right to take an appeal from the decision of the said district court whether or not they were parties to the appeal in the said district court, and any person so becoming a party to an appeal or appealing shall have the right to have the question of their continued inclusion in or exclusion from the permanent irrigation district determined in any such proceedings, as well as to contest the exclusion or inclusion of land of others involved in the appeal.

Section 29.—The amount that shall be assessed and levied upon a given tract of land included in the permanent irrigation district shall be determined as follows:

The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, and shall add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said en-

suing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, existing in connection with the Irrigation Fund from the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any of the sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the permanent irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to two (2) per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands at the time included in the permanent irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable for and pay taxes levied hereunder in the same manner as the other lands included in the said irrigation district); *Provided, however,* That no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district; *Provided, further, however,* That if any portion of the principal of any bonds falling due in any year cannot be paid under an assessment levied according to the provisions of this Section, then the amount which cannot so be paid and for the refunding of which provision is hereinafter made, shall not be deemed a deficit in any subsequent year; *And provided, further,* That prior to the certifying by the Commissioner of the Interior of the amount thus estimated by him as receipts

from water power the Commissioner of the Interior, if in his judgment it is advisable, shall deduct from the amount thus estimated by him a sum not to exceed twenty-five (25) per cent of the said amount for the development and extension of the said water power.

No tract of land included in the permanent irrigation district shall pay any tax until it shall have received or have been offered water from the irrigation system for a period of twelve months (said water to have been received after the inclusion of the said land in the temporary irrigation district), or, if the said land is first included in the permanent irrigation district, after the said inclusion but thereafter the said tract of land shall be liable at the regular assessment dates as would have been the case had all the lands in the permanent irrigation district been assessed under the provisions of this Section; *Provided,* That the said tract of land shall pay a tax for the portion of the half year (either fiscal or calendar as the case may be), if any remaining after the completion of the said period of twelve months, for which no taxes are paid in accordance with the foregoing provisions, and the tax due for any such portion of a half year shall be payable upon the first of the month succeeding the completion of the said period of twelve months for which no taxes are paid in accordance with the foregoing provisions.

Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district. The amounts resulting from such computation, or if such amounts exceed the amount which can be assessed under the provisions hereof, then such maximum amount as may be assessed under the said provisions, shall be extended upon the taxroll for the different tracts at the time comprising the permanent irrigation district. The tax-roll so extended shall be completed by the Treasurer of Porto Rico on or before the first day of July of each year, and is hereby imposed as a charge upon the said lands (but not as a personal liability upon the owners thereof) in favor of The People of Porto Rico, and shall con-

stitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Porto Rico as provided by law, and the same shall become due and Treasurer of Porto Rico shall proceed to the collection thereof, and to the embargo and sale of the land to enforce payment, in the manner and at the time now or hereafter provided by law for the collection and enforcement of other real property taxes except that in the case of taxes assessed for a period of less than six months as hereinbefore provided the said taxes shall be assessed, levied and collected as hereinbefore provided; *Provided, however,* That anything hereinbefore contained to the contrary notwithstanding, (1) the tax on said land shall be at a rate of not to exceed twelve (12) dollars per acre per annum for the period, if any, between the beginning of the permanent irrigation district and the beginning of the subsequent half year (fiscal or calendar, as the case may be); (2) in case any assessment for any fiscal year determined as above provided shall amount to more than fifteen (15) dollars per acre per annum, then the assessment for such fiscal year shall exceed fifteen (15) dollars per acre per annum only to the extent that it is necessary that the assessment should exceed the said rate in order to provide for the payment of interest, operation and maintenance, the deficit of the preceding year, if any; (*Provided, however,* That no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district), and the two (2) per centum margin of safety provided for above, plus thirty thousand (30,000) dollars for the payment of the principal of bonds falling due in the said fiscal year, less the surplus, if any, of the preceding year and any receipts as income from other sources, as above provided; and (3) that no tax for the payment of any amount for interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided shall be paid on any tract of land which has received or has been offered, prior to the date for payment of the said tax, water from the irrigation system for more than one full fiscal year, unless the said tract of land shall have

received or shall have been offered, during the preceding fiscal year, water from the irrigation system, as shown by the records of the Department of the Interior, to the amount of at least one acre-foot per acre during the first six months thereof and at least one acre-foot per acre during the second six months thereof; *Provided, further,* That when in the above case the said tax is due upon the first of July terminating the fiscal year to which the above test is to be applied, then the said land shall pay the aforesaid taxes as if it had received or had been offered water from the irrigation sytem during the first six months of the said fiscal year, to the amount of at least one acre-foot per acre; *Provided, further,* That no tax for the payment of any amount for interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided, shall be paid on any tract of land which has not, prior to the date for payment of the said tax, received or been offered water from the irrigation system for more than one full fiscal year, unless said tract of land shall have received or shall have been offered water from the irrigation system as shown by the records of the Department of the Interior to the amount of at least one acre-foot per acre during the next preceding half year (either calendar or fiscal) ending more than one month prior to the date of the said payment; *Provided, further, however,* That the foregoing exceptions from the payment of taxes conditioned upon the receipt by, or the offering to, the lands within the irrigation district of a certain amount of water from the irrigation system shall cease to be operative and effective at such time after the beginning of the permanent irrigation district as the Commissioner of the Interior shall certify to the Treasurer of Porto Rico that each and every fundamental integral part of the said irrigation system has been constructed.

The amount which may be included in the assessment for any one fiscal year for the payment of the principal of the bonds shall not exceed seventy-five (75,000) dollars.

Section 32.—Each tract of land shall be made liable only for its proportionate share of taxes determined

as herein provided. In case any tract of land shall become subdivided, each subdivision shall be liable only for the proportionate amount of taxes thereafter assessable on it, considered as a separate tract.

Prior to the beginning of the temporary irrigation district, as provided herein, the Commissioner of the Interior is hereby authorized and empowered to enter into contracts with any land owner or lessee for the sale of water from the irrigation system and the proceeds from the sale of such water shall be covered into the Isabela Irrigation Fund; *Provided, however,* That such contract or contracts shall terminate upon the date of the beginning of the said temporary irrigation district.

Section 33.—The amount of water which shall be set as a standard for the establishment of both the temporary and permanent irrigation districts shall be four acre-feet per acre per annum, the said standard to be applied on the basis of fair average years; *Provided, however,* That should it appear at any time after the establishment of the district that the supply of water is insufficient to furnish to each acre in the said districts the full standard amount of four acre-feet, then each acre in the said district shall receive its proportionate share of the amount available.

Section 34.—That the right to use the water of the said irrigation system shall be inalienably appurtenant to the lands included in the temporary or permanent irrigation district, and shall pass with the title to the said lands or to any part thereof, to all subsequent owners thereof, and the owner or owners of the said tracts of land shall be prohibited from the sale or disposition of any of the water furnished to their lands, as a thing independent therefrom, to any other person or persons, or corporations whatever, under penalty of having the said lands excluded from the benefits of the irrigation system.

Section 37.—Should a potential water power be developed in connection with the construction of the irrigation system, the Commissioner of the Interior is hereby authorized to arrange for the utilization and exploitation thereof as an integral part of the said irrigation system by administration; *Provided, how-*

ever, That the rates for the sale of such power shall be approved by the Public Service Commission of Porto Rico.

All profits accruing from said power shall be covered into the Isabela Irrigation Fund and applied subject to the provisions hereinbefore provided (Sections 24 and 29), to the decrease of annual assessments until all indebtedness incurred on behalf of the irrigation system has been fully paid; but the right and title of ownership to such water power shall remain in the Insular Government, and the income from said work, after all indebtedness has been paid, shall be covered into the Insular Treasury as Insular revenues, until otherwise provided by the Legislative Assembly.

Section 39.—If there shall be in the Isabela Irrigation Fund an insufficient amount to pay for principal, interest or other charges payable out of the said fund, or if this fund shall at any time become temporarily exhausted, then the Treasurer of Porto Rico may, in anticipation of the collection of assessments from either the temporary or the permanent irrigation district, or in anticipation of the sale of bonds which shall have been previously authorized by legislative enactment on account of the irrigation system provided herein, pay such charges out of any funds in the Treasury not otherwise appropriated, charging the same to the Isabela Irrigation Fund, and repaying the same out of said fund when there is a sufficient amount therefor, together with interest at four (4) per cent per annum.

Section 40.—In the event that there remain in the Isabela Irrigation Fund any of the proceeds of the sale of the bonds for the irrigation system over and above the amount required for the completion of the construction thereof, and for such other purposes, for which bonds may be issued hereunder or under the act or acts authorizing the issue of bonds on account of the irrigation system, such surplus proceeds shall be used for the payment of the principal falling due upon outstanding irrigation bonds at such time as the Treasurer of Porto Rico, with the approval of the Governor, shall determine, or in the event that all such bonds shall have been retired, then for such other

purposes connected with the irrigation system as the Governor may determine.

Section 41.—That all laws and parts of laws in conflict with this Act, be, and the same are hereby, repealed.

Section 42.—That this Act shall be known as "The Isabela Public Irrigation Law" and shall take effect ninety days after its approval.

Act No. 61, approved July 21, 1923; Laws of 1923, pp. 402-406.

AN ACT

To amend Sections 1 and 4 of "An Act to authorize the issuance by the Insular Government of Porto Rico of bonds for an amount not to exceed three million (3,000,000) dollars, and for other purposes," approved June 18, 1919.

Be it enacted by the Legislature of Porto Rico:

Section 1.—That sections 1 and 4 of Act No. 59, approved June 18, 1919, entitled "An Act to authorize the issuance by the Government of Porto Rico of bonds for an amount not to exceed three million (3,000,000) dollars and for other purposes," are hereby amended to read as follows:

"Section 1.—For the purpose of providing funds sufficient for the construction of a system of irrigation in Porto Rico for the district lying approximately between the Guajataca river on the east and the town of Aguadilla on the west, as provided for in the Act entitled 'Isabella Public Irrigation Law,' and for the purpose of advancing the funds provided by the aforesaid Act, the Treasurer of Porto Rico is hereby authorized, empowered and directed to issue bonds of The People of Porto Rico for an amount not exceeding three million three hundred and twenty-five thousand (3,325,000) dollars."

"Section 4.—The said bonds may be in coupon or registered form or both. The coupon bonds may be made exchangeable for registered bonds under such regulations as may be prescribed thereon. The bonds may be in any or all of the following denominations:

one thousand (1,000) dollars, five thousand (5,000) dollars, ten thousand (10,000) dollars. They shall bear interest at a rate not to exceed four and one-half (4½) per cent per annum, which interest shall be paid semi-annually on the first day of each of the months of January and July. The bonds shall be divided into series for payment. The series shall be indicated by a letter on each bond, and they shall be redeemable and payable as follows:

"The said bonds shall mature in the order of their issuance. Seventy-five thousand (75,000) dollars shall mature on January 1, 1929, and an equal amount on the first day of each succeeding year thereafter until the full amount shall have been paid; but any or all of said bonds maturing after January 1, 1939, may be redeemed at the option of The People of Porto Rico, on or after January 1, 1939, on any interesting-paying day, at five (5) per cent above par, and interest accrued thereon, with six months' notice, given in such manner as may be prescribed by the Treasurer of Porto Rico. In case of partial redemption the bonds to be redeemed shall be determined pursuant to such method as the Treasurer of Porto Rico may prescribe. Both principal and interest shall be payable at the Treasury of the United States or in Porto Rico at the office of the Treasury of Porto Rico, or at the office of the fiscal agent of the Government of Porto Rico, appointed therefor in the United States, as the Treasurer of Porto Rico may determine, with the approval of the Governor, in gold coin of the United States of the present standard of weight and fineness."

Section 2.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 3.—This Act is hereby declared to be of an urgent and necessary character, and therefore it shall take effect immediately after its approval.

Joint Resolution No. 12, approved July 3, 1929; Laws of 1929, Special Session, pp. 56-72.

JOINT RESOLUTION

Repealing Section 24 and amending Section 29 of the Isabela Public Irrigation Act, approved June 19,

1919, as the same were amended by Act No. 29, approved April 21, 1928.

WHEREAS, The establishment of irrigation methods in the irrigation district of Isabela requires the expenditure of large sums of money by the landholders in order to meet the water assessments levied on them by the Isabela Public Irrigation Act, and in addition to obtain a reasonable profit in compensation for their efforts;

WHEREAS, It is advisable and necessary to stimulate the immediate agricultural development of this region by aiding the owners of irrigated lands during the first years of the operation of the irrigation system by reducing their water assessments, thus contributing to the public interests and welfare;

WHEREAS, Said reduction of the water assessments will create shortages in the receipts of the Isabela Public Irrigation System, thus preventing The People of Porto Rico from meeting its obligations contracted on account of the issue of bonds for the construction of said irrigation system, and the operation and maintenance thereof;

WHEREAS, It is necessary to provide such additional funds as may be required to pay the obligation contracted on account of said bonds and the expense of operating and maintaining the irrigation system, until such time as the receipts from water assessments and other services derived from said irrigation system are sufficient to cover all obligations and expenses;

WHEREAS, It is necessary to provide for the payment, when due, of various sums of money which the Treasurer of Porto Rico borrowed from the banks pursuant to law (chargeable to the Isabela Irrigation Fund) for the redemption of bonds due and payment of interest thereon, which loans are short-term loans;

NOW, THEREFORE, *Be it resolved by the Legislature of Porto Rico:*

Section 1.—Section 24 of the Isabela Public Irrigation Act, approved June 19, 1919, as amended by Act

No. 29, approved April 21, 1928, is hereby entirely repealed.

Section 2.—Section 29 of the Isabela Public Irrigation Act, approved June 19, 1919, as amended by Act No. 29, approved April 21, 1928, is hereby amended to read as follows:

"Section 29.—The amount that shall be assessed and levied upon a given tract of land included in the irrigation district shall be determined as follows:

"The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, and shall add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, resulting in connection with the Irrigation Fund by reason of the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power plant developed in connection with the irrigation system until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full; and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any of the sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to five (5) per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands included at the time in the irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable

for and shall pay the taxes levied hereunder in the same manner as the other lands included in the said irrigation district); *Provided,* That if any portion of the principal of, and interest on, any bonds falling due in any year cannot be paid under an assessment levied according to the provisions, of this Section, then the amount which cannot so be paid and for the refunding of which provision is hereinafter made, shall not be deemed a deficit in any subsequent year; *Provided further,* That prior to the certifying by the Commissioner of the Interior of the amount thus estimated by him as receipts from the water power plant, the Commissioner of the Interior, if in his judgment it is advisable, may deduct from the amount thus estimated by him a sum not to exceed twenty-five (25) per cent of the said amount for the development and extension of the said water-power plant.

"No tract of land included in the irrigation district shall pay any tax until it shall have received or shall have been offered water from the irrigation system for a period of twelve months (said water to have been received after the inclusion of the said land in the temporary irrigation district, or if the said land is first included in the permanent irrigation district, after the said inclusion); but thereafter the said tract of land shall be liable on the regular assessment dates for the same assessments as would have been the case had all the lands in the irrigation district been assessed under the provisions of this section; *Provided,* that the said tract of land shall pay an assessment for the portion of the half year (either fiscal or calendar, as the case may be), if any, remaining after the completion of the said period of twelve months for which no assessments are paid in accordance with the foregoing provisions; and such assessment as may be due for any part of such portion of a semester shall be paid on the first day of the month following the termination of the aforesaid period of twelve months for which no assessment is paid under the foregoing provisions.

"Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said irriga-

tion district. The amounts resulting from such computation, or if such amounts exceed the amount which can be assessed under the provisions hereof, then such maximum amount as may be assessed under the said provisions, shall be extended upon the tax-roll for the different tracts at the time constituting the irrigation district.

"The tax-roll so extended shall be completed by the Treasurer of Porto Rico on or before the first day of July of each year, and is hereby imposed as a lien upon the said lands (but not as a personal liability upon the owners thereof) in favor of the People of Porto Rico, and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Porto Rico as provided by law, and such mortgages as are referred to herein, and such assessments shall become due and the Treasurer of Porto Rico shall proceed to the collection thereof, and to the attachment and sale of the land to enforce payment, in the manner and at the time now or hereafter provided by law for the collection and enforcement of other real property taxes, except that in the case of taxes assessed for a period of less than six months, as hereinbefore provided, the said taxes shall be assessed, levied and collected as hereinbefore provided; *Provided, however,* That notwithstanding anything hereinbefore contained to the contrary, the assessment on said land shall be at the rate of six (6) dollars per acre per annum for the period, if any, between the end of the period of twelve months during which no assessment is payable, as hereinbefore provided, and the beginning of the next succeeding half year (either fiscal or calendar as the case may be).

The assessment on the said land shall be at the rate of six (6) dollars per acre per annum for the entire first fiscal or calendar year, as the case may be, after the completion of the said period of twelve months, or at the rate of twelve (12) dollars per acre per annum for the entire second fiscal or calendar year, as the case may be, following said termination of the above-mentioned period of twelve months, and at the rate of thirteen (13) dollars an acre a year for the entire third fiscal or calendar year, as the case may be.

subsequent to the said termination of the stated period of twelve months, and at the rate of fifteen (15) dollars an acre a year for the entire fourth fiscal or natural year, as the case may be, subsequent to said termination of the mentioned period of twelve months. From the fourth fiscal or calendar year, and thereafter, and after the said termination of the stated period of twelve months, the rate of assessment on said land shall never be more than fifteen (15) dollars an acre for a fiscal or calendar year, as the case may be; and for the purpose of providing for the amortization of the principal of such bonds as may fall due in the aforesaid fiscal year, for the payment of interest, operation and maintenance and of the deficit, if any, of the preceding year, and of the five per cent margin of security hereinbefore provided for, less the surplus, if any, remaining from the preceding year, and any receipts obtained from other funds, such amounts as may be necessary for such purposes shall be included, without excuse of any kind, in the regular budget of the necessary expenses to carry on the government of Porto Rico for the fiscal year immediately following the year thereof, without need of any additional legislation whatever; *Provided,* That such appropriation shall have the same privilege and preference as the payment of the principal of, and interest on, the public debt, which under the heading 'Miscellaneous Expenditures' is appropriated for in the regular budgets approved by the Insular Legislature to carry on the government of Porto Rico.

"It is further understood that the Treasurer as well as the Auditor of Porto Rico shall at all times adopt such measures as may be necessary to comply absolutely with the foregoing provisions, since, as has been said, the landholders of the Isabela Public Irrigation System can never be affected by such deficits as there may be as a consequence of the determination of the maximum assessment of fifteen dollars an acre a year fixed for landholders from and after the fourth fiscal or calendar year above stated, after the mentioned termination of said period of twelve months, as the case may be; *Provided, further,* That no assessment levied as hereinbefore provided, shall be paid on any tract of land which, prior to the date of payment of

said tax, has received or been offered water from the irrigation system for more than one entire fiscal year, unless the said tract of land shall have received or shall have been offered water from the Irrigation System during the preceding fiscal year, as shown by the records of the Irrigation Service, to the amount of at least one acre-foot per acre, during the first six months of said fiscal year, and at least one acre-foot per acre during the second six months; *Provided, further,* That when, in the above case, the said assessment is due upon the first of July terminating the fiscal year to which the above rule is to be applied, then the said land shall pay the said assessment as if it had received or had been offered water from the irrigation system during the first six months of the said fiscal year to the amount of at least one acre-foot per acre; *Provided, further,* That no assessment levied as above provided, shall be paid on any tract of land which prior to the date of payment of the said tax, has not received water, or has been offered water from the Irrigation System for more than one entire fiscal year, unless the said tract of land shall have received or shall have been offered water from the Irrigation System, as shown by the records of the Irrigation Service, to the amount of at least one acre-foot per acre, during the next preceding half-year (either calendar or fiscal, as the case may be) ending more than one month prior to the date of the said payment; *Provided, however,* That the foregoing exemptions from the payment of taxes, conditioned upon the receipt of a certain amount of water by the holders of irrigated land, or on the offer of water made to them for land in the irrigation district, shall cease to be operative and effective at such time after the beginning of the permanent irrigation district as the Commissioner of the Interior shall certify to the Treasurer of Porto Rico that each and every fundamental integral part of the said irrigation system has been constructed; *Provided,* That any person, natural or artificial, of whatever character the latter may be, who shall hereafter acquire the possession under title of ownership, or ownership of more than five hundred (500) acres of land in the irrigation district hereby created, shall be subject to the payment of double the amount of the assessment fixed in this

Act for the irrigation service to be furnished, on the amount of acres exceeding the said five hundred (500) acres.

It is understood that the assessment-roll extended as provided in this section shall constitute a tax the lien for which shall be paramount and preferent in law to any other right, claim or lien, except the general taxes of Porto Rico, as provided by law, and except also such mortgages as may be created for a term of eighteen years or more, payable by fixed annual installments, provided said mortgages are constituted at a rate of not to exceed six per cent (6%) annually, and for any of the following purposes:

(*a*) For permanent improvements in the properties;

(*b*) For the purchase of fertilizer, seeds, cattle, or agricultural implements;

(*c*) For the cancellation of mortgages or the payment of debts contracted for agricultural purposes; and provided that their object is to permit the landholders of the irrigation district to avail themselves as far as possible of the advantages offered them by the irrigation system; it being understood that such encumbrance shall not be in excess of one hundred (100) dollars of principal for each *cuerda.*"

Section 3.—For the purpose of providing funds for the payment of principal of, and interest on, the bonds already issued and sold for the construction of the irrigation system, as well as for the operation and maintenance of said system until such time as the funds necessary for these purposes are produced by such assessments as may be levied on irrigated lands, as hereinbefore provided, and by the proceeds of other receipts, derived from said system, the Treasurer of Porto Rico is hereby authorized, empowered and directed to issue bonds of The People of Porto Rico to the amount of one million, two hundred and fifty thousand (1,250,000) dollars, or such part thereof as may be necessary.

Section 4.—Said bonds shall be sold on such terms as may be most favorable to The People of Porto Rico and shall be issued in series so that the proceeds of the

sale thereof may be available on the dates and in the amounts stated below:

$750,000 on January 1, 1930.
150,000 on January 1, 1931.
150,000 on January 1, 1932.
100,000 on January 1, 1933.
100,000 on January 1, 1934.

Section 5.—Said bonds may be in coupon or registered form, or both. The coupon bonds may be made exchangeable for registered bonds under such regulations as may be prescribed therein. The bonds may be of any or all of the following denominations: one thousand (1,000) dollars; five thousand (5,000) dollars, and ten thousand (10,000) dollars. They shall bear interest at a rate of not to exceed five (5) per cent a year, payable semi-annually on the first day of January and the first day of July of each year. Said bonds shall be divided into series for the purpose of redemption, the series to be indicated by a letter on each bond, and they shall be redeemable in the order of issue as follows:

Five thousand (5,000) dollars on July 1, 1952.
Five thousand (5,000) dollars on July 1, 1953.
Ten thousand (10,000) dollars on July 1, 1954.
Fifteen thousand (15,000) dollars on July 1, 1955.
Twenty thousand (20,000) dollars on July 1, 1956.
Twenty thousand (20,000) dollars on July 1, 1957.
Twenty-five thousand (25,000) dollars on July 1, 1958.
Thirty thousand (30,000) dollars on July 1, 1959.
Thirty-five thousand (35,000) dollars on July 1, 1960.
Forty thousand (40,000) dollars on July 1, 1961.
Forty-five thousand (45,000) dollars on July 1, 1962.
Fifty thousand (50,000) dollars on July 1, 1963.
Fifty-five thousand (55,000) dollars on July 1, 1964.
Sixty-five thousand (65,000) dollars on July 1, 1965.
Seventy thousand (70,000) dollars on July 1, 1966.
Seventy-five thousand (75,000) dollars on July 1, 1967.
Eighty-five thousand (85,000) dollars on July 1, 1968.
Ninety thousand (90,000) dollars on July 1, 1969.
One hundred thousand (100,000) dollars on July 1, 1970.
One hundred and ten thousand (110,000) dollars on July 1, 1971.

One hundred and twenty thousand (120,000) dollars on July 1, 1972.

One hundred and eighty thousand (180,000) dollars on July 1, 1973.

The principal of, as well as the interest on, said bonds shall be payable, as determined by the Treasurer of Porto Rico, at the Treasury of the United States or in Porto Rico, at the office of the Treasurer of Porto Rico or at the office of such fiscal agent of the government of Porto Rico as may be appointed for the purpose in the United States by the Treasurer of Porto Rico, with the approval of the Governor, in gold coin of the United States of the present standard of weight and fineness.

Section 6.—Said bonds may be sold by the Secretary of War of the United States, or by the Treasurer of Porto Rico, or by any fiscal agent appointed for the purpose by the Treasurer of Porto Rico, with the approval of the Governor of Porto Rico, on such terms as may be most favorable to The People of Porto Rico and as soon after the date of issue as may be feasible. The proceeds of the sale of such bonds shall be deposited with an authorized depositary of the government of Porto Rico to be designated by the Treasurer of Porto Rico.

The Treasurer of Porto Rico, with the approval of the Governor, shall have absolute charge and authority, under the limitations herein prescribed, in connection with all matters relative to said bonds, including the terms and denominations thereof, the manner, time and method of issue and sale, subject to the limitations herein prescribed, and shall adopt all such measures as may be necessary fully to perform the purposes of this Act, and he may take all necessary action for the issue of interim bonds or certificates, pending preparation of the final bonds.

Section 7.—Pursuant to the provisions of section 3 of "An Act to provide a civil government for Porto Rico, and for other purposes", approved March 2, 1917, the bonds the issue of which is hereby authorized, shall be exempt from taxation by the Government of the United States or by the Government of Porto Rico, or any political sub-division or municipality thereof, or by any state, county, municipality or other municipal sub-division of any state or territory of the United States, or by the District of Columbia.

Section 8.—The proceeds of the sale of said bonds shall be devoted to the payment of principal of, and interest on, the bonds heretofore issued and sold for the construction of the irrigation system and for the operation and maintenance of said system until the funds necessary for these purposes are produce by such assessments as may be levied, as hereinbefore provided.

Section 9.—The good faith of The People of Porto Rico is hereby irrevocably pledged for the payment of the principal of, and interest on, the aforesaid bonds; and all such funds as may be collected by reason of taxes levied under section 29 of the Isabela Irrigation Act, as hereby amended, shall be devoted, and are hereby irrevocably pledged to secure payment of the principal of, and interest on, the aforesaid bonds.

The foregoing provisions in regard to the payment of interest on said bonds, and the repayment of the principal, shall be deemed to be in the nature of a continuous appropriation, and be sufficient authorization to the Treasurer of Porto Rico to make such payments, and no further appropriation for such purpose shall be required. Such payments, however, shall be made upon the warrants of the Auditor of Porto Rico, countersigned by the Governor of Porto Rico, in accordance with law. The bonds issued under the authority of this Act, and the obligations created hereby, shall not be impaired by any subsequent act or resolution of the Legislature of Porto Rico or by any interpretation of any act or resolution heretofore approved, but said bonds, when duly issued and sold, shall constitute a legal and binding obligation of the Government of Porto Rico until properly redeemed and paid.

Section 10.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 11.—It is hereby declared that an emergency exists requiring the immediate taking effect of this Act, and therefore, it shall take effect immediately after its approval.

Act No. 70, approved May 15, 1934; Laws of 1934, pp. 476-490.

AN ACT

To amend Sections 23 and 29 of the "Isabela Public Irrigation Law", approved June 19, 1919, as

amended by Act No. 29, approved April 21, 1928, by Joint Resolution No. 12, approved July 3, 1929, by Act No. 24, approved April 22, 1930, and by Act No. 96, approved May 15, 1931; To add three new sections to said "Isabela Public Irrigation Law" to be known as Sections 29A, 29B and 29C, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Sections 23 and 29 of the "Isabela Public Irrigation Law", approved June 19, 1919, as amended by Act No. 29, approved April 21, 1928; by Joint Resolution No. 12, approved July 3, 1929; by Act No. 24, approved April 22, 1930, and by Act No. 96, approved May 15, 1931, are hereby amended to read as follows:

"Section 23.—During the life of the provisional irrigation district, the Irrigation Commission is hereby empowered to modify the geographical boundaries of said provisional district so as to include therein new irrigable lands. In such case the provisions of section 20 of the Isabela Public Irrigation Law shall be complied with; *Provided*, That the Irrigation Commission shall proceed, as soon as this Act takes effect, to exclude from the provisional irrigation district all tracts of land which on account of their nature are inadequate to be cultivated under irrigation, whenever their owners so prove before the Commission by expert evidence prior to June 30, 1939.

"The said temporary irrigation district, as hereinbefore provided, shall continue in existence until June 30, 1937."

"Section 29.—The amount that shall be assessed and levied upon a given tract of land included in the irrigation district shall be determined as follows:

"The Treasurer of Puerto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, and shall add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, resulting in connection

with the Irrigation Fund by reason of the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power plant developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any of the sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to five (5) per centum of the total as a margin of safety for delay collections, and the amount thus determined by the Treasurer of Puerto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands included at the time in the irrigation district (including any lands owned by The People of Puerto Rico which form part of the said district, which lands shall be liable for and shall pay the taxes levied hereunder in the same manner as the other lands included in the said irrigation district); *Provided,* That if any portion of the principal of, and interest on, any bonds falling due in any year cannot be paid under an assessment levied according to the provisions of this section, then the amount which cannot so be paid and for the refunding of which provision is hereinafter made, shall not be deemed a deficit in any subsequent year; *Provided, further,* That prior to the certifying by the Commissioner of the Interior of the amount thus estimated by him as receipts from the water-power-plant, the Commissioner of the Interior, if in his judgment it is advisable, may deduct from the amount thus estimated by him a sum not to exceed twenty-five (25) per cent of the said amount for the development and extension of the said water-power plant.

"No tract of land included in the irrigation district shall pay any tax until it shall have received or shall have been offered water from the irrigation system, for

a period of twelve months (said water to have been received after the inclusion of the said land in the temporary irrigation district or, if the said land is first included in the permanent irrigation district after the said inclusion); but thereafter the said tract of land shall be liable on the regular assessment dates for the same taxes as would have been the case had all the lands in the irrigation district been assessed under the provisions of this section; *Provided*, That the said tract of land shall pay a tax for the portion of the half year (either fiscal or calendar, as the case may be), if any, remaining after the completion of the said period of twelve months for which no assessments are paid in accordance with the foregoing provisions; and such assessment as may be due for any part of such portion of a semester shall be paid on the first day of the month following the termination of the aforesaid period of twelve months for which no assessment is paid under the foregoing provisions.

"Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said irrigation. The amounts resulting from such computation, or if such amounts exceed the amount which can be assessed under the provisions hereof, then such maximum amount as may be assessed under the said provisions, shall be extended upon the tax-roll for the different tracts at the time constituting the irrigation district.

"The tax-roll so extended shall be completed by the Treasurer of Puerto Rico on or before the first day of July of each year, and is hereby imposed as a lien upon the said lands (but not as a personal liability upon the owners thereof) in favor of The People of Puerto Rico, and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Puerto Rico as provided by law, and such mortgages as are referred to herein, (as well as crop-loan credits constituted by credit associations or cooperatives at present organized or which may be organized hereafter within the irrigation district,) and such assessments shall become due and the Treasurer of Puerto Rico shall proceed to the collection thereof, and to the attachment and sale of the land to enforce payment, in

the manner and at the time now or hereafter provided by law for the collection and enforcement of other real property taxes; *Provided,* That the Treasurer of Puerto Rico is hereby empowered to attach all or part of the real property of the irrigable zone in order to enforce the collection of the assessments hereby levied; *Provided, further,* That he can never attach real property of the irrigable zone when such property, after all charges or encumbrances thereon have been deducted, has a value, for the purposes of taxation, of more than double the amount due, except that in the case of taxes assessed for a period of less than six months as hereinbefore provided, the said taxes shall be assessed, levied and collected as hereinbefore provided; *Provided, however,* That notwithstanding anything hereinbefore contained to the contrary, the assessment on said land shall be at the rate of six (6) dollars an acre a year for the period, if any, between the end of the period of twelve months during which no assessments is payable, as hereinbefore provided, and the beginning of the next succeeding half year (either fiscal or calendar, as the case may be). The assessment on the said land shall be at the rate of six (6) dollars an acre a year for the entire first fiscal or calendar year, as the case may be, after the completion of the said period of twelve months, and at the rate of six (6) dollars an acre a year for the entire second fiscal or calendar year, as the case may be following said termination of the above-mentioned period of twelve months, and at the rate of seven (7) dollars an acre a year for the entire third fiscal or calendar year, as the case may be, subsequent to the said termination of the stated period of twelve months, and at the rate of eight (8) dollars an acre a year for the entire fourth fiscal or calendar year, as the case may be, subsequent to said termination of the mentioned period of twelve months, and at the rate of nine (9) dollars an acre a year for the entire fifth fiscal or calendar year, as the case may be, after the said termination of the mentioned period of twelve months, and at the rate of six (6) dollars an acre a year for the entire sixth, seventh, eighth, ninth and tenth fiscal or calendar years, as the case may be, after the termination of the said period of twelve months. The assessment on the said land shall be at the rate of ten (10) dollars an acre a year for the entire eleventh fiscal or calendar year, as the case may

be, after the completion of the said period of twelve (12) months, and at the rate of eleven (11) dollars an acre a year for the entire twelfth fiscal or calendar year, as the case may be, after the completion of the said period of twelve (12) months, and at a rate of twelve (12) dollars an acre a year for the entire thirteenth fiscal or calendar year, as the case may be, after the completion of the said period of twelve (12) months, and at a rate of thirteen (13) dollars an acre a year for the entire fourteenth fiscal or calendar year, as the case may be, after the completion of the said period of twelve (12) months, and at the rate of fourteen (14) dollars an acre a year for the entire fifteenth fiscal or calendar year, as the case may be, after the completion of the said period of twelve (12) months. From the sixteenth fiscal or calendar year, and thereafter, and after the said termination of the stated period of twelve months, the rate of assessment on said land shall never be more than fifteen (15) dollars an acre for a fiscal or calendar year, as the case may be; and for the purpose of providing for the amortization of the principal of such bonds as may fall due in any fiscal year, for the payment of interest, operation and maintenance and of the deficit, if any, of the preceding year, and of the five per cent margin of security hereinbefore provided for, less the surplus, if any, remaining from the preceding year, and any receipts from other sources, as provided, the legislature shall annually provide such amounts as may be necessary for such purposes, in such form and manner as it may deem advisable; *Provided, however,* That no assessment levied as hereinbefore provided, shall be paid on any tract of land which, prior to the date of payment of said tax, has received or been offered water from the irrigation system for more than one entire fiscal year, unless the said tract of land shall have received or shall have been offered water from the Irrigation System during the preceding fiscal year, as shown by the records of the Irrigation Service, to the amount of at least two acre-feet per acre, during the first six months of said fiscal year, and at least two acre-feet per acre during the second six months; *Provided, further,* That when, in the above case, the said assessment is due upon the first of July terminating the fiscal year to which the above rule is to be applied, then the said land shall pay the said assessment as if it had re-

ceived or had been offered water from the irrigation system during the first six months of the said fiscal year to the amount of at least two acre-feet per acre; *Provided, further,* That no assessment levied as above provided shall be paid on any tract of land prior to the date of payment of the said tax, has not received water or has been offered water from the Irrigation System for more than one entire fiscal year, unless the said tract of land shall have received or shall have been offered water from the Irrigation System, as shown by the records of the Irrigation Service, to the amount of at east two acre-feet per acre, during the next preceding half-year (either calendar or fiscal, as the case may be) ending more than one month prior to the date of the said payment; *Provided, further, however,* That the foregoing exemptions from the payment of taxes, conditioned upon the receipt of a certain amount of water by the holders of irrigated land, or on the offer of water made to them for land in the irrigation district shall cease to be operative and effective at such times after the beginning of the permanent irrigation district as the Commissioner of the Interior shall certify to the Treasurer of Puerto Rico that each and every fundamental integral part of the said irrigation system has been constructed.

"It is understood that the assessment-roll extended as provided in this section shall constitute a tax the lien for which shall be paramount and preferent in law to any other right, claim or lien, except the general taxes of Puerto Rico, as provided by law, except crop-loan credits constituted by credit associations or cooperatives at present organized or which may be organized hereafter within the irrigation district, and except also such mortgages as may be constituted for a term of eighteen years or more, payable in fixed annual instalments, provided said mortgages are constituted at a rate of not to exceed six and one-half (6½) per cent annually, and for any of the following purposes:

"(*a*) For permanent improvements in the properties;

"(*b*) For the purchase of fertilizer, seeds, cattle or agricultural implements;

"(*c*) For the cancellation of mortgages or the payment of debts contracted for agricultural purposes; and provided that their object is to permit the landholders

of the irrigation district to avail themselves as far as possible of the advantages offered them by the irrigation system; it being understood that such encumbrances shall not be in excess of one hundred (100) dollars of principal for each *cuerda.*"

Section 2.—Two new sections are hereby added to the "Isabela Public Irrigation Law", to be numbered 29 A and 29 B which shall read as follows:

"Section 29 A.—It is hereby deferred, and the Treasurer is authorized to defer, the collection of due and pending taxes on June 30, 1934; *Provided,* That said deferred taxes shall be paid within a period of twenty-five (25) years beginning from July 1, 1934, in twenty-five equal parts, under the conditions and within the limitations prescribed by Act No. 10, approved August 19, 1933, to defer the payment of taxes on real property, in so far as the provisions of the aforementioned Act are not in conflict herewith; *Provided, further,* That the irrigation taxes due and pending collection on June 30, 1934, as are hereby deferred shall constitute a current debt of the holders of irrigated lands in favor of the Treasury of Puerto Rico, the amount of which shall not enjoy the preference established by law in favor of every due and unpaid irrigation tax."

"Section 29 B.—The Treasurer of Puerto Rico is authorized to deduct and cancel from the amount of every receipt ten (10) per centum thereof as a reward for the prompt payment, at their respective maturity dates, of the taxes levied from and after July 1, 1934, and during the ten (10) following years. For the purposes of this Section it shall be understood that a tax has been promptly paid when the amount of every semester receipt has been paid within the sixty (60) days following the issuance of said receipt, as well as within the sixty (60) days the corresponding part of the deferred taxes under this Act has been paid."

"Section 29 C.—In case of sale or foreclosure of the irrigated lands to which this Act refers, and which are benefited by the deferment prescribed by the foregoing Section 29 A, it shall be the duty of the purchaser or of the grantee to pay the taxes owed by said lands; *Provided,* That no transfer of said lands to any absent or resident corporation shall be made or recorded in the registry of property without previously showing that the taxes due and pending collection have been paid, in

which case the prescribed deferment shall not be effective."

Section 3.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 4.—This Act, being of an urgent and necessary character, shall take effect immediately after its approval.

Act No. 78, approved May 12, 1936; Laws of 1936, pp. 422-426.

AN ACT

To suspend, until June 30, 1941, Section 29 of the Isabela Public Irrigation Law, approved June 19, 1919, as amended by Act No. 29, of April 21, 1928, Joint Resolution No. 12, of July 3, 1929, Act No. 96, of May 15, 1931, and Act No. 70, of May 15, 1934, in so far as it refers to the fixing of taxes; To suspend in their entirety until the same date, Sections 33 and 34 of the said Isabela Public Irrigation Law, as now in force; To levy a tax or quota for each acre of land now included in the temporary irrigation district, or which may hereafter be included in the permanent irrigation district of said irrigation system, while the suspension of Sections 29, 33, and 34 of said law subsists; To fix prices and conditions for the sale of water from the Isabela Irrigation system during the effectiveness of this Act; To determine the manner of paying for the water sold to water users, and for other purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1.—In order to promote the quickest development of the temporary irrigation district of Isabela, Aguadilla, and Moca, and to alleviate the precarious condition of the water users of said district during the present economic crisis, section 29 of the Isabela Public Irrigation Law, approved June 19, 1919, as amended by Act No. 29 of April 21, 1928; Joint Resolution No. 12, of July 3, 1929, Act No. 96, of May 15, 1931, and Act No. 70, of May 15, 1934, is hereby suspended until June 30, 1941, only in so far as it refers to the fixing of irrigation taxes, but is left subsistent in all other respects; and sections 33 and 34 of the aforesaid Isabela Public Irrigation Law, approved June 19, 1919, as amended by Act No. 29, of

April 21, 1928; Joint Resolution No. 12, of July 3, 1929; Act No. 96 of May 15, 1931, and Act No. 70 of May 15, 1934; are hereby suspended until June 30, 1941.

Section 2.—Sections 29, 33, and 34 of the aforesaid Isabela Public Irrigation Law, as now in force, shall be in full force and effect in their entirety on July 1, 1941, unless otherwise provided by legislative action.

Section 3.—Partly to preserve the fundamental principle of the original Isabela Public Irrigation Law, the Treasurer of Puerto Rico is directed to levy and collect, from and after July 1, 1936, and until June 30, 1941, unless otherwise provided by legislative action, a tax or quota of one (1) dollar on each acre of land which may have been or may be included in the temporary district, or which may be included hereafter in the permanent irrigation district, of said Irrigation System; *Provided,* That said tax or quota shall be fixed and levied to protect the rights of the lands included to enjoy the service of water in the manner hereinafter provided. Said tax or quota is hereby levied as a charge on the said lands (although not as a personal responsibility of the owners thereof) in favor of The People of Puerto Rico, and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim, or lien of any nature save and except the general taxes of Puerto Rico, as provided by law, which taxes shall mature and the Treasurer of Puerto Rico shall proceed to their collection and to the attachment and sale of the land in order to compel the payment in the manner and on the date now or hereafter provided by law for the collection, and to compel the payment of other taxes on real property.

Section 4.—During all the time in which this Act is to be in force, the Commissioner of the Interior is hereby empowered to sell water from the irrigation system to the land-holders of the irrigation district, for the exclusive purpose of applying the water to the lands for the intensification of their cultivation, in accordance with the following prices and conditions;

For each acre-foot or fraction thereof delivered to any parcel of land included in the temporary district or in the permanent irrigation district, through a

gravity system of canals and laterals, at the rate of two (2) dollars an acre-foot.

For each acre-foot or fraction thereof delivered to parcels not included in the temporary district or in the permanent irrigation district, through a gravity system of canals and laterals, at the rate of two dollars and fifty cents ($2.50) an acre-foot.

For each acre-foot or fraction thereof delivered to any parcel in the irrigation district where it is necessary to make accessory installations for pumping stations, a price shall be collected in addition to the foregoing, at the rate of one (1) cent for each acre-foot for each foot in the difference of elevation between the point of intake and the point of discharge of the pumping station.

Section 5.—The Commissioner of the Interior is authorized to prescribe such rules and regulations as may be necessary for the sale of water; *Provided,* That the payments to be made for such reason shall be made in advance of the furnishing of water; *Provided, further,* That water shall not be delivered to any parcel on which the tax levied in accordance with section 3 of this Act has not been paid, with the exception of the price fixed for water delivered to parcels not included within the irrigation district.

Section 6.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 7.—This Act shall take effect ninety days after its approval.

Act. No. 126, approved May 14, 1937; Laws of 1937, pp. 284-286.

AN ACT

To amend Section 2 of Act No. 59, approved June 18, 1919, entitled "An Act to authorize the issuance by the Insular Government of Porto Rico of bonds for an amount not exceeding three million (3,000,000) dollars, and for other purposes," as amended by Act No. 29, approved May 1, 1934, and Act No. 31, approved July 20, 1935; To ratify and confirm the legality of the issue of bonds made by virtue of Act No. 28, entitled "An Act to authorize the issuing

of bonds for the purposes of constructing houses for artisans and laborers, provide for the leasing of the same, with a certain right to the ownership thereof, improve the sanitary conditions of certain lands of the People of Porto Rico; Promote the creation of farms to be leased to farm laborers and to grant them title thereto, and for other purposes," approved November 27, 1917, and for other purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1.—Section 2 of Act No. 59, approved June 18, 1919, entitled "An Act to authorize the issuance by the Insular Government of Porto Rico of bonds for an amount not exceeding three million (3,000,000) dollars, and for other purposes," as amended by Act No. 29, of May 1, 1934, and Act No. 31, of July 20, 1935, is hereby amended to read as follows:

"Section 2.—Should the proceeds of the special assessment as provided for in the Act above mentioned (Section 29), be insufficient in any year to meet the entire amount of the payment of the principal on outstanding bonds falling due that year in addition to the other necessary payments, as provided in the aforesaid Act, then the Treasurer of Puerto Rico may, with the approval of the Governor, issue new refunding bonds to the amount necessary to pay the principal falling due during the said year; *Provided,* That should no tax be paid on lands in the temporary or permanent irrigation district during any year as provided for in Sections 24 and 29 of the above-mentioned Act, or should the amount received from taxes upon the lands in the said irrigation districts be so reduced because of the operation of the said sections, as to require it, then the Treasurer of Puerto Rico may, with the approval of the Governor, issue such additional bonds as may be necessary to cover all expenses and to meet all the obligations of the irrigation system for the said year; *Provided,* That the total amount of such additional bonds issued to cover expenses and to meet obligations of the irrigation system during any year or years in which, in accordance with Sections 24 and 29 of the aforesaid Act, no tax is paid on lands

in the said irrigation districts in which the amount received from taxes is insufficient to meet the said expenses and obligations of the irrigation system, shall not at any time exceed the total amount of irrigation bonds previously authorized; *And provided, further,* That the aforesaid refunding bonds shall be issued in series which shall not exceed seventy-five thousand (75,000) dollars each, of like denominations, and under the same terms and conditions, and shall bear interest at the same rate as that provided in Section 4 of this Act. The said refunding bonds shall mature in series in the order of their issues. The first series of refunding bonds shall mature January 1, 1974, and each of the following series shall mature on the first day of January of each of the following years; but any or all of the series of refunding bonds may be redeemed, at the will of The People of Puerto Rico, ten years after the date of their issue, at five (5) per cent above par, and accrued interest, on any interest payment date, by giving sixty (60) days' notice in such manner as may be prescribed by the Treasurer of Puerto Rico. The bonds, the issuance of which is authorized in this Act, may be sold by the Secretary of the Interior of the United States."

Section 2.—It is hereby declared that the issue of bonds made by authority of Act No. 28, entitled "An Act to authorize the issuing of bonds for the purpose of constructing houses for artisans and laborers, provide for the leasing of the same, with a certain right to the ownership thereof, improve the sanitary conditions of certain lands of The People of Porto Rico; promote the creation of farms to be leased to farm laborers and to grant them title thereto, and for other purposes," approved November 27, 1917, which issue of bonds, known by the name of *Puerto Rico 4½ per cent Gold Loan of 1932, Series "A" and "B" Homestead Bonds,"* was made pursuant to the provisions of law, and by virtue thereof the legality of the same is hereby confirmed and ratified.

Section 3.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 4.—It is hereby declared that this Act is of an urgent and necessary character, and it shall, therefore, take effect immediately after its approval.

Act No. 144, approved May 15, 1937; Laws of 1937, pp. 384-385.

AN ACT

To amend Section 23 of Act No. 63, approved June 19, 1919, known as the "Isabela Public Irrigation Act," as amended by Act No. 70, approved May 15, 1934, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Section 23 of the "Isabela Public Irrigation Act" approved June 19, 1919, as amended by Section 1 of Act No. 70, approved May 15, 1934, is hereby amended to read as follows:

"Section 23.—During the life of the provisional irrigation district, the Irrigation Commission is hereby empowered to modify the geographical boundaries of said provisional district so as to include therein new irrigable lands. In such case the provisions of Section 20 of the Isabela Public Irrigation Act shall be complied with; *Provided,* That the Irrigation Commission shall proceed, as soon as this Act takes effect, to exclude from the provisional irrigation district all tracts of land which, on account of their nature, are unsuitable for cultivation under irrigation, whenever their owners so prove before the Commission by expert evidence prior to June 30, 1937; *Provided, further,* That the Treasurer of Puerto Rico is hereby authorized and empowered to cancel, and he shall cancel, all receipts for irrigation taxes levied up to June 30, 1937, on such parcels or part of a parcel as may be excluded by the Irrigation Commission; *It being understood,* That in case of the exclusion of only a part of any parcel, then the Treasurer of Puerto Rico is authorized and empowered to issue receipts for irrigation taxes on the parts of the parcel that remain included in the irrigation district, to substitute the receipts previously issued for the entire parcel; *It being understood, further,* That the Treasurer of Puerto Rico shall not cancel any receipts for irrigation taxes levied on any parcel or part of a parcel for the benefit of which use has been made of irrigation water, as certified by the Commissioner of the In-

terior, and which may be excluded from the irrigation district by the Irrigation Commission.

"The said temporary irrigation district, as hereinbefore provided, shall continue in existence until December 31, 1937."

Section 2.—All laws or parts of laws in conflict herewith are hereby repealed.

"Section 3.—It is declared that, as a state of emergency exists, this Act is of an urgent character and shall take effect immediately after its approval.

Act No. 146, approved May 15, 1937; Laws of 1937, pp. 387-388.

AN ACT

To readjust, making it more just and equitable, the indebtedness of the persons using water from the Isabela Public Irrigation System, for irrigation quotas levied on the land included in the irrigation district, up to June 30, 1936, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—The Treasurer of Puerto Rico is hereby empowered and authorized to readjust, making it more just and equitable, the indebtedness of the persons using water from the Isabela Public Irrigation System, for irrigation quotas levies on the land included in the irrigation district, up to June 30, 1936, subject to the following plan:

The amount to be charged and levied on any parcel of land while it is a part of the provisional irrigation district shall be at the rate of one (1) dollar an acre, a year, for all the years that it has formed a part of said district, except that for the first year no quota shall be levied. Moreover, the Treasurer shall collect for all the water that has been received for the benefit of the land, as the Commissioner of the Interior may certify, at a rate of one (1) dollar per acre-foot; *Provided,* That three (3) dollars a year shall be collected, for *water only,* for each acre where the quantity of water received for the benefit of the land has been four acre-feet a year.

The amount of the irrigation taxes levied on the land

within the irrigation district, up to June 30, 1936, may be cancelled through the total payment of the debt so readjusted, and the Treasurer of Puerto Rico is hereby authorized and empowered to cancel, and he shall cancel, all receipts for irrigation taxes levied on on each parcel of land of the provisional irrigation district up to June 30, 1936, after having received the amount of the readjusted debt for each parcel; *Provided,* That the Treasurer of Puerto Rico is hereby authorized and empowered to deduct, and he shall deduct, from the amount of the readjusted debt for each parcel, such taxes and surcharges as may have been paid by its owners, as well as the extensions due and paid under Section 29*a* of Act No. 70, approved May 15, 1934; *It being understood,* That it shall be optional for the landowners to avail themselves of the benefits of this Act or to continue to avail themselves of the benefits of Section 29*a* of Act No. 70, approved May 15, 1934.

Section 2.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 3.—It is declared that, as a state of emergency exists, this Act is of an urgent character and shall take effect immediately after its approval.

Act No. 178, approved May 14, 1941; Laws of 1941, pp. 1062-1066.

AN ACT

To suspend until June 30, 1951, Section 29 of the Isabela Public Irrigation Act, approved June 19, 1929, as amended by Act No. 29 of April 21, 1928, by Joint Resolution No. 12 of July 3, 1929; by Act No. 96 of May 15, 1931, and by Act No. 70 of May 15, 1934, as refers to the fixing of quotas; To suspend in their entirety until the same date, Sections 33 and 34 of said Isabela Public Irrigation Act, as it is today in force; To levy a tax or quota on each acre of land at present included in the permanent irrigation district of said irrigation system, for as long as the suspension of Sections 29, 33 and 34 of the said Act subsists; To fix the prices and conditions for the sale of water from the Isabela Irrigation System during the effectivity of this Act; To

prescribe the manner of paying for the water sold to the water users, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—*Statement of Motives.*—Act No. 78, approved May 12, 1936, decreed the suspension of Section 29 for a period of five (5) years, expiring June 30, 1941, only as refers to the fixing of irrigation quotas, but subsisting as to the other particulars of same, and of Sections 33 and 34 of the Isabela Public Irrigation Act, approved June 19, 1919, as amended by Act No. 29 of April 21, 1928, by Joint Resolution No. 12 of June 3, 1929, by Act No. 96 of May 15, 1931, and by Act No. 70 of May 15, 1934. Since said term of five (5) years is about to expire, the experience acquired in the meantime justifies a change in the quotas as they were established by said Act No. 78 of May 12, 1936, to fix them in harmony with the improved condition of the water users and in harmony also with the needs of the Irrigation System in order to be able to render an adequate service to said water users without incurring losses in the exploitation of the Irrigation Service proper, as has been the case in past years.

Section 2.—Section 29 of the Isabela Public Irrigation Act is hereby again suspended until June 30, 1951, as subsequently amended, only as refers to the fixing of irrigation quotas, but subsisting as to the other particulars of same; and Sections 33 and 34 of the said Isabela Public Irrigation Act, as subsequently amended, are hereby again suspended until June 30, 1951.

Section 3.—Sections 29, 33 and 34 of the said Isabela Public Irrigation Act, in the manner originally approved, that is, as approved on June 19, 1919, shall be in full force and effect from July 1, 1951, unless otherwise provided by legislative action.

Section 4.—To preserve in part the principal basis of the original Act of the Isabela Public Irrigation Act, the Treasurer of Puerto Rico is directed to levy and collect, beginning July 1, 1941, and until June 30, 1951, unless otherwise provided by legislative action, a tax or quota on each acre of land included in the Permanent Irrigation District of said Irrigation System according to the following schedule of quotas and allotments of water:

For the first ten (10) acres, at the rate of one dollar per acre per year without any allotment of water; it being understood, that said quota of one dollar is fixed and is levied to insure the right of the lands included in the Permanent District to enjoy the service of water in the manner hereinafter provided.

For all the acres in excess of the first ten (10) at the rate of four (4) dollars per acre per year, which shall be understood to cover a fixed quota of one (1) dollar per acre per year to insure the right of the land to enjoy the service of water, and three (3) dollars as value of an allotment of water of one and one-half (1½) acre-feet per acre per year with the right, if necessary, to purchase water in excess of the allotment, in the manner hereinafter provided.

Said tax or quota fixed according to the preceding schedule is hereby levied as a lien on all of the lands mentioned (although not as a personal liability of the owners of same) in behalf of The People of Puerto Rico, and shall constitute a tax liability which shall be superior and prior by law to any right, claim or liability of any kind, save and except the general taxes of Puerto Rico, as provided by law, which quotas shall be due, and the Treasurer of Puerto Rico shall proceed to collect them, and to attach and sell the land to compel payment, in the manner and on the date as is now provided or as may hereafter be provided by law for collecting and compelling the payment of other taxes on real property.

Section 5.—The Commissioner of the Interior is hereby authorized to sell, during all the times that this law is in force, to the land-owners of the irrigation districts, water from the Irrigation System, for the exclusive purpose of applying it to the lands for the intensification of plantations, in accordance with the following prices and conditions:

For each acre-foot or fraction thereof of water delivered to any parcel included in the Permanent District, that has paid the tax or the quota fixed in Section 4 of this Act, at the rate of two (2) dollars per acre-foot.

For each acre-foot or fraction thereof of water delivered to any parcel included in the Permanent District, which has not paid the total amount fixed in Section 4 of this Act for the semester corresponding

to the date when the application is made to purchase water, at the rate of $2.50 per acre-foot; *Provided,* That water shall not be delivered to any parcel which, on the date when the application for the purchase of water is made, appears in debt for a period of over two semesters.

Section 6.—The Commissioner of the Interior is hereby authorized to prescribe the rules and regulations that may be necessary for the sale and delivery of water; *Provided,* That payments by reason of said sale shall be in advance of the delivery of the water.

Section 7.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 8.—This Act shall take effect on July 1, 1941, since on June 30, 1941 expires the term fixed by Act No. 78 of May 12, 1936.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 216

THE PEOPLE OF PUERTO RICO, ON BEHALF OF THE ISABELA IRRIGATION SERVICE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 39–50) is not reported. The opinion of the circuit court of appeals (R. 58–68) is reported in 134 F. 2d 267.

JURISDICTION

The judgment sought to be reviewed was entered on March 11, 1943 (R. 68). A petition for rehearing was denied April 13, 1943 (R. 68). A

petition for a writ of certiorari was filed July 31, 1943, within the time as extended by Mr. Justice Frankfurter (R. 69). The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether petitioner is entitled to recover damages from the United States for the loss of the right to impose future irrigation assessments on lands condemned by the Government and for the resulting loss of revenue to the "Isabela Irrigation Fund" and the People of Puerto Rico.

2. Whether petitioner is entitled to compensation for the cost of extending its irrigation system to other lands.

STATUTES INVOLVED

The relevant statutes providing for the construction and financing of the Isabela Irrigation Service are set out in the appendix to petitioner's brief (Pet. 55–101).

STATEMENT

The United States on September 6, 1939, instituted condemnation proceedings (R. 1–4), accompanied by a declaration of taking (R. 5–6), to acquire 1,877.39 acres of land in Puerto Rico for the establishment of an Army Air Base at Punta Borinquen (R. 2, 19). Included within the land condemned were 592 acres lying within the Isabela

Irrigation Service (R. 27–29, 44), an irrigation district organized in 1919 by the legislature of Puerto Rico for the purpose of providing an irrigation system for the northwestern portion of the Island (Pet. 56, 61). Funds for the establishment and operation of the irrigation service had been obtained from Puerto Rican bonds secured by the good faith of the insular government and by the revenues to be derived from annual assessments on the lands included in the irrigation district (R. 39–41, 59). Under later changes in the statutes the assessment provisions of the original plan were suspended and water was no longer furnished outright to members of the project. Instead water was sold to users. In place of the assessments a special annual tax of $1.00 per acre was substituted, entitling landholders within the project to buy water at a lower rate than that paid by landholders outside the district. (R. 39–44, 59–60; Pet. 91–101.)

On April 5, 1940, the People of Puerto Rico, on behalf of the Isabela Irrigation Service, filed an answer in these proceedings, alleging that it was entitled to compensation from the United States for the "taking" of certain "tangible" and "financial" items, as follows (R. 9–12):

Tangible Items:	
Group 1:	
1. Land and right-of-way	$1,826.07
2. Canals and structures	21,366.00
3. Electric power lines	5,701.00
	28,893.07

Tangible Items—Continued.	
Group 2:	
1. Aguadilla Canal. "The total cost of the Aguadilla Canal is placed at $80,000, approximately. About ⅕th part of it could have been saved if built to feed water for only the lands that now came to be served after diminution of extent of irrigation district thru the withdrawal of land within the site of the Puerto Rican Air Base. The excess investment is therefore"	$16,000.00
Group 3:	
1. New Conveyances (new pipe to be run along eastern boundary of Air Base)	19,500.00
Total tangible items	64,393.07
Financial Items:	
Group A:	
1. Loss of income, new conveyances	199,000.00
Group B:	
1. Advances for payment of interest on bonded debt	114,374.19
2. Arrears in payment of amortization	64,839.60
Total financial items	378,213.79
Grand total of all items	442,606.86

It is thus to be noticed that of these three groups of assertedly "tangible" items, only Group 1, valued at $28,893.07, covered tangible property of the claimant actually taken in these proceedings. Groups 2 and 3, though classified by the claimant as "tangible," related not to property actually taken but to damages assertedly suffered through the taking in connection with its remaining property not actually taken—in short, "severance damages."

Subsequently the district court ordered the People of Puerto Rico to file a statement of particulars with respect to the claim for "financial items" (R. 21–22). Accordingly, on January 26, 1942, a statement was filed which modified the

original claim in the following manner (R. 23–24):

> * * * the theory upon which the claim for financial items is contained in the answer of The People of Puerto Rico, as modified herein is as follows:
>
> (a) Claim covering levies in arrears as of June 30, 1936, in the amount of $559.91; claim on the theory that the amount of such claim is an encumbrance on the property condemned, and should, therefore, be paid out of the money on deposit as market value of the land.
>
> (b) Claim covering levies in arrears from July 1, 1936, to the date of the taking, September 6, 1939, in the amount of $58.75 based on the theory that the amount thereof is a burden or encumbrance of the property taken, and should, therefore, be paid out of the money on deposit as market value of the land.
>
> (c) *Claim for damages suffered as a direct and inevitable result of readjusting the irrigation district of Isabela by including new land in the same amount as that taken under these proceedings, and the construction and establishment of new equipment therein so that the service may continue in operation in conditions analogous to those prior to the taking.*[1] The amount of this claim to be computed on the basis of the present cost of the required installation, including constructions of canals, laterals,

[1] Italics are supplied throughout this brief.

gates, equipment, etc.; less the depreciation of such installation for a number of years equivalent to that in which the severed installation had been in use; less the amount of $64,393.07, allowed by the court as present recoverable value of the severed installation; namely: $114,716.

It is the theory of The People of Puerto Rico that the resulting amount under this item after the proper reduction is approximately $114,716 and should be paid as an additional compensation by the United States.

On February 28, 1942, the United States and the People of Puerto Rico stipulated (R. 29, 33–34):

1. That the sum of $64,393.07 shall be in full satisfaction of and represents the just compensation for the taking by the United States of the property of said defendant described in its answer filed in this proceeding on April 5, 1940 as "Tangible Items" and fully described hereinabove in this stipulation.

2. That this court is hereby authorized and petitioned to enter a deficiency judgment in accordance with that portion of the defendant's answer designated as "Tangible Items" adjudging just compensation for the taking of said tangibles to be the amount of $64,393.07.

3. That the defendant accepts as full and just compensation for the taking of the tangibles and damages to the interests set forth under that portion of its answer in

this proceeding which is designated as "Tangible Items" the sum of $64,393.07 provided that in the deficiency judgment which may be entered pursuant to this stipulation jurisdiction in this court be expressly retained for the purpose of passing upon and adjudicating the liability of the petitioner for the payment of the amounts claimed in the defendant's answer as "Financial Items", *as modified and substituted by paragraph (c) of their statement of particulars* * * *.

The court thereupon entered an order reciting that the claims to levies in arrears in the amounts of $559.91 and $58.75 described in the statement of particulars had been satisfied from the fund on deposit and that (R. 36–37):

> Whereas, a stipulation has been entered into between the United States of America and The People of Puerto Rico by which the sum of $64,393.07 has been agreed upon as the reasonable market value of the lands and structures belonging to the Isabela Irrigation Service which were taken and destroyed by the United States in this proceeding;
>
> Whereas, it appears from the incidents above recited as well as from the pleadings on file in this proceeding that a preliminary issue has been raised by The People of Puerto Rico, to wit: *Is The People of Puerto Rico entitled to receive compensation in this proceeding as a matter of law for the estimated amount of the cost of sup-*

plying irrigation to new lands of an equivalent area to those withdrawn from the irrigation service as a result of this proceeding?

Now, therefore, it is hereby ordered that the above issue be set down for hearing on the twenty-seventh day of March, 1942 at 9:30 A. M. at which time both parties may fully present whatever law or facts they may have in support of their respective positions.

In a deficiency judgment filed also on February 28, 1942, the court awarded $64,393.07 "in satisfaction of all damages and as just compensation for the taking of all items included under the term 'Tangibles' in the answer filed by said defendant" and reserved "jurisdiction to determine the validity and amount of the additional claim" (R. 37–39).

The issue thus reserved was thereafter submitted to the district court which held that the cost of relocation was not a proper item for compensation (R. 39–50), and accordingly dismissed petitioner's claim in the additional amount of $114,716 (R. 51). The circuit court of appeals affirmed (R. 58–68) and denied a subsequent petition for rehearing (R. 68). Petitioner now seeks certiorari.

ARGUMENT

1. Petitioner contends (Pet. 1, 2, 14, 15, 16, 20-21, 27, 35, 36–45, 47) that it is entitled to recover damages from the United States for the loss of

the right to impose future irrigation assessments on the lands condemned by the Government and for the resulting loss of revenue to the "Isabela Irrigation Fund" and the People of Puerto Rico. There are three answers to this contention.

In the first place, the People of Puerto Rico, by a stipulation entered into with the United States on February 28, 1942 (R. 29–34), limited its claim for additional compensation against the United States to "damages suffered as a direct and inevitable result of readjusting the irrigation district of Isabela by including new land in the same amount as that taken under this proceeding" (R. 32, 23). By this stipulation and the court order of the same date the issue remaining for trial was thus specifically limited to the following question: "Is the People of Puerto Rico entitled to receive compensation in this proceeding as a matter of law *for the estimated amount of the cost of supplying irrigation to new lands of an equivalent area* to those withdrawn from the Irrigation Service as a result of this proceeding?" (R. 36–37). This question as to relocation damages being agreed upon as the *sole* issue, petitioner is barred from reviving the fully abandoned and distinctly separate issue raised in its original answer (R. 12) as to its right to recover for the loss of future assessments and of other revenues from the lands condemned. *Gage* v. *J. S. Smyth Mercantile Co.*, 160 Fed. 425, 431

(C. C. A. 8); *State* v. *Superior Court,* 151 Wash. 413, 276 Pac. 98 (1929).

In the second place and irrespective of the stipulation, the claim for loss of future assessments and revenue is foreclosed by the holding of this Court in *Mullen Benevolent Corp.* v. *United States,* 290 U. S. 89, 94–95; see also *United States* v. *City of Buffalo,* 54 F. 2d 471, 474 (C. C. A. 2), certiorari denied, 285 U. S. 550; 47 Harv. L. Rev. 706. Petitioner concedes (Pet. 21) that the bonded indebtedness of the Irrigation District was not an actual lien under Puerto Rican statutes at the time the proceedings were instituted and title passed to the United States under the declaration of taking (Cf. R. 65–66). There being no lien, the condemnation proceeding at most frustrated action by the People of Puerto Rico to replenish the assessment fund. "Frustration and appropriation are essentially different things." *Omnia Co.* v. *United States,* 261 U. S. 502, 513; *United States ex rel. T. V. A.* v. *Powelson,* No. 3, October Term, 1942, decided May 17, 1943.

In the third place, in determining just compensation for the lands taken, the awards were duly enhanced by "the availability of irrigation" (R. 47, 55). Those awards have been paid into court. They stand in place of the land. *People of Puerto Rico* v. *United States,* 131 F. 2d 151–152 (C. C. A. 1), certiorari denied, March 15, 1943, Nos. 714–715, October Term, 1942. Any contractual claim

which the People of Puerto Rico may have had against the property owners must now be asserted against the awards. How the awards are distributed among the various claimants is no legal concern of the condemnor. *United States* v. *Dunnington*, 146 U. S. 338, 351; *St. Paul* v. *Certain Lands in the City of St. Paul, Minn.*, 48 F. 2d 805 (C. C. A. 8).

2. In the stipulation of February 28, 1942, petitioner agreed (1) to accept $64,393.07 in satisfaction of its claim for "tangible items"—the district's lands and rights-of-way, canals and structures, electric power lines, *severance damages to the Aguadilla Canal, the cost of running a new pipe line to connect up the remaining system, etc.* (R. 30–31, 33–34, 10–11), and (2) to limit its claim for additional compensation to matters asserted in paragraph 3 (c) of its bill of particulars—the cost "of readjusting the irrigation district of Isabela by including new land in the same amount as that taken" (R. 33–34, 23–24, 45–46).

That the Government is under no obligation to pay for the expense of replacing or relocating a business on another site in lieu of the land condemned is well settled.[2] *Gershon Bros. Co.* v. *United States*, 284 Fed. 849 (C. C. A. 5); *Potomac*

[2] The circuit court of appeals' decisions which petitioner asserts establish a conflict with the decision herein (Pet. 23–24), presumably on this point, do not do so because they involved claims for severance damages. Petitioner has been fully compensated for severance damages, as shown subsequently in the text.

Electric Power Co. v. *United States,* 85 F. 2d 243, 249 (App. D. C.); *Futrovsky* v. *United States,* 66 F. 2d 215, 216–217 (App. D. C.). Nor is the Government liable for more than the fair market value of the land condemned where the condemnee is unable to find another suitable site. *Mitchell* v. *United States,* 267 U. S. 341, 343, 345; *Sirio Match Co.* v. *United States,* 81 C. Cls. 427, 438 (1935); cf. *Deepe* v. *United States,* 103 Colo. 294, 86 P. 2d 242 (1938). So-called damages of this type are consequential; there is no taking by the United States of the items claimed; and they have no relation to the fair market value of the property. *Bothwell* v. *United States,* 254 U. S. 231, 233; *Joslin Co.* v. *Providence,* 262 U. S. 668, 675–676; *Wm. Wrigley, Jr., Co.* v. *United States,* 75 C. Cls. 569, 584–585 (1932); *Howard Co.* v. *United States,* 81 C. Cls. 646, 652, 654 (1935).

The district court so held and rejected petitioner's sole remaining claim of $114,716 for relocation costs (R. 49–50). On appeal petitioner did "not seriously contend that the cost of readjusting the irrigation system is compensable" (R. 62). And in its petition in this Court the People of Puerto Rico apparently make no claim whatever for relocation costs as such.

Instead, petitioner attempts to inject into the case a new and additional claim for severance damages (Pet. 2–3, 15–17, 26–34). As has already been pointed out (*supra,* pp. 4, 11), server-

ance damages were included in the $64,393.07 awarded petitioner for "tangible items"—groups 2 and 3 being pure "severance" (R. 11, 31, 34, 36, 38). Having by stipulation of February 28, 1942, limited its claim to additional compensation to item 3 (c)—the cost of relocation—and having agreed to accept $64,393.07 for "tangible items" including "severance," petitioner is in no position to shift its theory in the appellate courts and claim additional "severance damages" (cf. R. 64).

Furthermore, an analysis of the severance claim shows it to be without merit. This claim is based primarily on loss of revenue—the inability to levy future assessments against these particular lands, and to sell water to private users, in short, a general lessening of the earning capacity of this irrigation project (Pet. 2–3, 15–17, 26–34). But such a claim is not compensable. *Mullen Benevolent Corp.* v. *United States,* 290 U. S. 89; cf. *Deepe* v. *United States,* 103 Colo. 294, 86 P. 2d 242 (1938). The mere fact, if it be a fact, that the earning capacity of petitioner's "public utility" (cf. R. 48) was somewhat curtailed by the taking of private lands within the irrigation district does not give rise to a claim for damages. "Injury to a business carried on upon lands taken for public use * * * does not constitute an element of just compensation." *Joslin Co.* v. *Providence,* 262 U. S. 668, 675; *Mitchell* v. *United States,* 267 U. S. 341, 345. And, contrary to petitioner's contention

(Pet. 15–17, 26–34) such claims are not to be indirectly allowed as "severance damages." If the complete destruction of a business enterprise conducted in connection with the land condemned is not compensable, *a fortiorari* no recovery may be had for a partial interference. *Oakland* v. *Pacific Coast Lumber & Mill Co.*, 171 Cal. 392, 153 Pac. 705 (1915).

As applied in the case at bar, the rule is clearly sound and practical. Here the petitioner has stipulated as to the full value of its tangible properties taken by the United States and as to the actual damage to the severed canal system (R. 34, 38). If the United States were required also to pay additional readjustment or "severance" damages it would be paying more than just compensation; the Government would, in fact, be providing the irrigation district with a gratuity. This is so because if the district desires to extend its system to new lands it will have available all of the money obtained from the Government in lieu of its old lands, rights-of-way, canals, equipment, etc., embraced within the property condemned. "What claimant is asking is that it be paid the fair value of that part of its distribution system located on the land taken, and that it be paid also the cost of constructing another distribution system in a different land area. It is not entitled to both." (R. 50, 62.)

CONCLUSION

The decision of the court below is correct and presents no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 216

THE PEOPLE OF PUERTO RICO,
On Behalf of the Isabela Irrigation Service,
Petitioner,

vs.

UNITED STATES OF AMERICA, et al [Individual landowners],
Respondents.

REPLY BRIEF FOR PETITIONER
IN REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

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IN THE

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THE PEOPLE OF PUERTO RICO,
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UNITED STATES OF AMERICA, et al [Individual landowners],
Respondents.

REPLY BRIEF FOR PETITIONER
IN REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

I.

The Federal Government's Brief in Opposition too narrowly states (*Brief*, pp. 8-9) **petitioner's contention and claim.**

Petitioner's claim,—insofar as the federal government is concerned,—as contradistinguished from the landowner respondents,—is stated in Questions "1" and "2" under the heading "Questions Presented" (pp. 2-3) in our Petition for Certiorari, and in sub-paragraphs "3" to "5" *et seq.* (pp. 15 *et seq.*) under the heading "Petitioner's Position: Errors of the Lower Courts"; and in our "Argument", particularly in the headings to Points I, II, III, and IV (pp. 25-34), and the succeeding Points in our Supporting

Brief. [*And see also the summary of our "Points" contained in the "Subject Index"* (pp. ii-v) *to the Petition and Supporting Brief*].

II.

The Brief in Opposition relies (*Brief*, p. 9) **upon "three answers" to our contentions**; viz.:

(1) The supposed "shift" in the position of The People of Puerto Rico, adverted to in the opinion of the Circuit Court of Appeals (R. 61-62), and mentioned in our original Petition for Certiorari (pp. 12-13), of which nevertheless the Circuit Court of Appeals itself said in its opinion (R. 62; 134 F. (2d), at p. 270), as quoted on page 13 of our original Petition:

> "In view of the fact that *the lower court assumed* by its discussion of the issue *that The People of Puerto Rico did not abandon* its claim of compensation for the right to make future assessments, we shall hereafter give it consideration."[1]

(2) That (*Brief*, p. 10):

> "the claim for loss of future assessments and revenue is foreclosed by the holding of this Court in *Mullen Benevolent Corp.* v. *United States*, 290 U. S. 89, 94-95; see also *United States* v. *City of Buffalo*, 54 F. (2d) 471, 474 (C.C.A. 2), certiorari denied, 285 U. S. 550; 47 Harv. L. Rev. 706."[2]

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[1] In other words, neither the District Court nor the parties while the case was in that court, considered that there was any real "shift" at any time from the essential basis of the claim of The People of Puerto Rico, but only in the suggestion of the *method of calculating the damages*, as was noted on page 13, *supra*, of our Petition for Certiorari.

[2] And see also Respondent's Brief, at pp. 13-14. This is the meat of the Respondent's contention,—insisting upon and attempting to support the lower courts' erroneous misinterpretation and misapplication of this Court's decision in the *Mullen Benevolent Corporation* case. (See also our "Reasons for Granting the Writ", in the Petition for Certiorari (pp. 23-24); and see also *infra*, "IV", pp. 5-12).

(3) That (*Brief*, pp. 10-11):

> "in determining just compensation for the lands taken, the awards were duly enhanced by 'the availability of irrigation' (R. 47, 55). Those awards have been paid into court. They stand in place of the land. * * * . Any contractual claim which The People of Puerto Rico may have had against the property owners must now be asserted against the awards. How the awards are distributed among the various claimants is no legal concern of the condemnor."

Respondent makes this bare statement without any reference to,—or any attempt whatsoever to answer,—what is said on this subject in our Petition for Certiorari ("Questions Presented"; Question "3", pp. 3-5; and "Petitioner's Position: Errors of the Lower Courts", "17", pp. 22-23), and in our Supporting Brief (Point XIV, "The Liabilities of the Individual Landowners of Lands Located within that Portion of the Irrigated District taken over by the Federal Government in these Proceedings"; pp 50-52).

It is believed that what we there said in our Petition and Supporting Brief was at least worthy of an answer from respondent; and that it is, in reality, conclusive in favor of The People of Puerto Rico on this point. Respondent's statement is no answer to it.

As we there pointed out: (1) The individual landowner respondents are still before the District Court and this Court in this proceeding, and the awards to them are still open for reconsideration in the present proceeding; and (2) The allowances to them of enhancements in their awards on account of "availability of irrigation" of their lands (R. 55) *appear not to have been reduced in any way*,—as they plainly should have been by the District Court,—*by any deduction whatsoever on account of their liabilities*,—or those of the lands,—for the payment of their respective proportions of the cost of construction and of maintenance of the irrigation system and of the necessary assessments to defray those costs and to amortize the bonds.

Those liabilities should surely not have been overlooked. It was error in the District Court to do so.

III.

Respondent also says (*Brief*, pp. 11-13) that the claim of The People of Puerto Rico here presented is for compensation for what the Respondent calls "severance damages"; and that since, as Respondent contends, the allowance of what were called the "Tangible Items" stated in the original Answer of The People of Puerto Rico (R. 10-11),—and which, without question, were allowed by the District Court (R. 38) to be paid to The People of Puerto Rico,—included, as the Respondent now contends, two items which were also themselves in reality in the same category of "severance damages",[3] therefore, no further claim for any other injuries of any kind in the nature of "severance damages" can be entertained by the Court, or allowed to this petitioner.

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[3] Viz., the two items:

(1) $16,000 for the cost of about one-fifth of the Aguadilla Canal, which fifth

> "could have been saved if built to feed water for only the lands that now came to be served after diminution of extent of irrigation district through the withdrawal of the land within the site of the Puerto Rican Air Base", (that is to say the stub-end of the Canal, there at those condemned lands, left empty and useless by cutting off the distribution ditches in the lands taken); and

(2) $19,500.00 for:

> "Approximately 13,000 lineal feet of reinforced concrete pipe 12" diameter to be laid along eastern boundary of Reservation, at $1.50 per lineal foot",

which, as pointed out in our Petition for Certiorari (Footnote 10, pp. 19-20), was simply to connect, as the District Court itself states (R. 49), parts of the canal directly severed from each other by the taking of these 592 acres of land by the United States, so as to lead the water in a new course, around, and outside of, the new Military Reservation.

Neither of those items has anything whatsoever to do with reimbursing The People of Puerto Rico for the cost of

The mere statement of this proposition seems to be a sufficient answer to it. *Cf. Mitchell* vs. *United States,* 267 U. S. 341, 344. No claim is made that there was anything, either in the original answer of The People of Puerto Rico stating the claim for these "Tangible Items" (R. 10-11), or in the "stipulation" between the parties, again referring to the "Tangible Items" (R. 29-31, 33-34), or in the District Court's "Order" of February 28, 1942 (R. 34-37) once more referring to them, or in the "Deficiency Judgment" (R. 37-39) directing their payment (R. 38),—or anywhere else in the record,—indicating any intention whatever to estop or bar in any way The People of Puerto Rico from asserting any claim for general damages to its whole integrated "Isabela Irrigation Service" system,—or from asserting any other claim which might be said to fall within the category of "severance damages",—simply because it might be said to be possible to define those two items listed among the "Tangible Items" as being also within the general category of "severance damages".

Suppose those two items were to be considered as "severance damages". *What of it?* They have been expressly denominated by both parties, in the "stipulation" *supra* (R. 30-31, 33) as "Tangible Items", with the express reservation (R. 34) that entry of judgment for their payment,—and acceptance of the payment by The People of Puerto Rico,—shall in no wise affect the prosecution of The People's claim for the "Financial Items". Moreover, on their face, neither of those two items has anything whatsoever to do with the general damages to the whole integrated system, here in question.

IV.

As above indicated, the gist of the whole of Respondent's

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the construction or maintenance of the upper works of the Irrigation System at the full size suitable to the full originally planned area of the irrigated districts,—something entirely outside of, and distinct from, the distribution equipment which had been located on the lands now taken by the Federal Government.

Brief in Opposition really boils down to an insistence that this Petitioner's entire claim here "is foreclosed by the holding of this Court" in the Mullen Benevolent Corporation case (Mullen Benevolent Corp. vs. United States, supra, 290 U. S. 89).

That is the meat of the Respondent's whole contention, as above indicated (*ante*, p. 2; foot-note 2); and, as we have said above, that is simply a repetition and reliance upon the lower courts' misinterpretation and misapplication of this Court's opinion in that case.

A. Our understanding of this Court's decision in the *Mullen Benevolent Corporation* case is stated in Point XI (pp. 40-45) of our original Supporting Brief here. As we said there (pp. 40-41) *the lower courts here misunderstood and misconstrued and misapplied* this Court's opinion in that case, in saying, as the District Court phrased it (R. 49,—approved in substance by the Circuit Court of Appeals, R. 67-68):

> "Insofar as loss of future assessments is concerned, the case is like the loss of bondholders upon condemnation by the United States of lands to which they look for assessments to pay the bonds, **which type of loss has been held to be non-compensable.** (See *John K. and C. Mullen Benevolent Corp.* v. *United States*, 280 U. S. 89)." [Emphasis supplied]

B. That is plainly not the holding of this Court in the Mullen Benevolent Corporation case, where this Court expressly pointed out (290 U. S. at pp. 90-91) that at the time of the federal government's acquisition of the lands for the construction of the American Falls Reservoir,—acquired partly by condemnation proceedings and partly by voluntary deeds from the then owners,—**the federal government carefully paid off and discharged the entire amounts of the original bonds issued under the original ordinances of the village of American Falls to pay for the costs of the construction of all of the contemplated improvements; so that at the time of the completion of the federal government's**

acquisition of the lands on or prior to January 1, 1927, there was no outstanding legal liability or claim or charge of any kind, on the part of anybody, or against any property whatever, for the payment of the balance of the actual costs of the construction of the improvements, or for the payment of the balance of the outstanding bonds, which had actually been *over-issued*, in excess of the amounts of the total assessments provided by the original ordinances.

C. As noted in our original Supporting Brief (p. 42, and footnote 14), the bonds involved in that case contained an express provision that they *did not constitute direct obligations* of the city or of its citizens or taxpayers, in any way.

D. None the less the city authorities,—recognizing that there was a *moral obligation* on their part to provide in some manner, so far as they could, for payment of that excess actual cost of the improvements over their original estimates, and for the excess amount of the bonds representing it,—proceeded, under permissive authority given them by the statutes of Idaho in case of such mistake in such original ordinances,[4] to enact new ordinances [5] to levy what were called "reassessments" on all the property in the districts for the amounts of the deficiencies.

But those "reassessments" were not made until July 3, 1928 (290 U. S. *supra* at p. 91), *more than eighteen months after the date,* January 1, 1927, *of the completion of the acquisition of the property by the United States;* and, because of that fact, it was apparently recognized by all the parties to that case that, as this Court said (*Mullen Benevolent Corp.* vs. *United States, supra,* 290 U. S. at p. 91);

> "But as the land was then owned by the United States, the assessment was a nullity."

E. Under those circumstances, it plainly followed that,

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[4] Idaho Compiled Statutes 1919, Sec. 4024; 290 U. S. *supra,* at p. 93.

[5] Ordinances Nos. 122, 123, and 124, *United States* vs. *Mullen Benevolent Corp.,* 63 F (2d) 48, 49; 290 U. S., *supra,* at p. 91.

as we have said, such of the bonds as still remained outstanding, representing the excess cost of the improvements over the total amounts of the original estimates provided for in the original ordinances of 1915 and 1916, *represented no legal liability or obligation whatever* of the United States on account of the lands which had thus been completely taken over by the federal government, as above stated, more than eighteen months prior to the enactment of the supplemental "reassessment" ordinances Nos. 122, 123, and 124 of July 3, 1928, insofar as concerned those lands, at that time owned by the United States; *and that those reassessment ordinances,* being, with regard to those lands, simply a "nullity", as this Court said of them, *did not affect the situation with relation to the United States in any way at all. It was not simply that those outstanding bonds represented no lien* upon those lands which had been bought by the United States so long prior to the enactment of those reassessment ordinances; but it was that they represented *no kind of legal liability or obligation or duty whatever on the part of the United States* [*or of anyone else*] *of any sort.*

F. Nevertheless, the Mullen Benevolent Corporation which had received some of those bonds (apparently by way of a gift from Mr. Mullen, who had apparently originally purchased them back in 1925), sued the United States under the Tucker Act for the face amount of the bonds and interest, under a theory that the Government was in some way liable for the amount because it had purchased the lands prior to the reassessment, and had thereby in effect deprived the City Council of the power to re-assess them for the deficiencies resulting from the mistaken under-estimate of the sewer and paving costs in the original ordinances in 1915 and 1916,—or had *"frustrated"* the City Council from the exercise of that legislative power. *But it was never claimed,* so far as appears, *that the City Council was under any legal duty or obligation* to exercise the *permissive* power given to it by Section 4024, *supra,* of the

Idaho Statutes,[6] nor that the Council proceeding which resulted in Nos. 122, 123 and 124 *supra* of July 3, 1928 had been in any way formally initiated, at all, prior to the Federal Government's completion of the land purchases "completed prior to January 1, 1927" (290 U. S. *supra,* at p. 91).

G. Upon those facts, this Court ruling against the Mullen Benevolent Corporation's claim, said in affirming the decision of the Circuit Court of Appeals for the Ninth Circuit[7] (290 U. S. *supra,* at p. 95):

> "What has been said shows that the respondent did not take or destroy any lien belonging to the petitioner. None remained upon the land, when the purchases were consummated. The re-assessments were the result of proceedings begun thereafter. They were ineffective to create a lien upon lands owned by the Government. *United States* v. *Buffalo,* 54 F. (2d) 471.
>
> "**The respondent did not expressly contract with the petitioner to make good any unpaid balance on the outstanding bonds. Can an implied contract of that nature be spelled out of the acts of the Government's agents? We think not.** Care was taken to free the lands of all liens, including the assessments then unpaid. **The vendors were under no legal liability at the date of transfer for any future re-assessments.** *United States* v. *Buffalo, supra; Brown* v. *Silverton,* 97 Ore. 441; 190

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[6] This Court said that Section 4024 of the Idaho Compiled Statutes of 1919 (*Mullen Benevolent Corp.* vs. *United States, supra,* 290 U. S. *supra,* at p. 93);

> "Re-assessment on all the property in the district is permitted by Sec. 4024,
>
> > 'Whenever, for any cause, mistake or inadvertence the amount assessed shall not be sufficient to pay the cost of the improvement made and enjoyed by the owners of property in the local assessment district where the same is made', . . .
>
> "It was under this section that the re-assessments were made in the instant case."

[7] *United States* vs. *John K. & Catherine S. Mullen Benev. Corp.,* 63 F (2d), 48.

Pac. 971; *Beezley* v. *Astoria*, 126 Ore. 177, 184; 269 Pac. 216." (*Emphasis supplied*)

H. *It is submitted that that is not at all a general ruling* that,—(as the Circuit Court of Appeals, affirming the District Court, construed it,—and as the respondent now contends),—where in condemnation proceedings a part of an integrated whole property, such as the Isabela Irrigation System in the present case, is taken, there can be no compensable claim for the destruction at the same time,—by means of the taking of that part of the physical property which is actually taken over,—of a valid theretofore existing contract right constituting an integral part of the integrated whole property, a legal liability and charge on irrigated lands taken over from other defendants to the same proceedings, regardless of whether or not such contractual claim or charge may be considered as having been secured by a technical prior "lien" on those lands at the time of the taking.

I. *No such express statement is contained in the opinion. It is believed that the contrary is implied.* If the bonds in that case had really represented any contractual obligation, it is fairly to be inferred that the *Mullen Benevolent Corporation* claim would have been sustained.

J. The gist of the opinion appears to be contained in the words which we have emphasized in the quotation above, which indicate the outstanding distinction between the facts in that case and in the present one; viz., that, in that case, as this Court there pointed out, as above quoted (290 U. S., at p. 95, *supra*):

> "The vendors were under no legal liability at the date of transfer for any future reassessment";

whereas *in the present case the landowners were expressly legally bound for the payment of all the assessments* until the bonds shall have been completely amortized, and thereafter for the maintenance and operation of the irrigation system (Section 29, "Isabela Public Irrigation Law", Act No. 63 of 1919, as amended), and the good faith of The Peo-

ple of Puerto Rico, administrator and trustee of the Irrigation System, is also "irrevocably pledged" for the payment of the bonds (Section 9, Act No. 59 of 1919, as amended.)[8]

V.

A contract right constituting a charge or claim or lien on irrigated lands and being an integral part of an entire single integrated irrigation system, in reliance upon which the system was built and financed and landholders placed their lands within its irrigation district, as is the case with the Isabela Irrigation System here involved, is "property", within the meaning of the Fifth Amendment; and cannot be taken by the government in condemnation proceedings or otherwise without just compensation; at least in any case where any part of the physical property forming the integrated whole is taken, as is the case here.

A. This is firmly established,—ever since the decisions of this Court in *Monongahela Navigation Company* vs. *United States*, 148 U. S. 312, 328-330, 341-345, and *United States* vs. *Grizzard*, 219 U. S. 180, 184, cited in our original Petition for Certiorari and Supporting Brief (pp. 16, 28-29, 30).

B. Since the *Grizzard* case, it is believed that [outside of the decisions of the lower courts in the present case] no case can be found in the federal courts where compensation

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[8] It is true that this Court, in the *Mullen Benevolent Corporation* case, said in one place, while stating the provisions of the bonds there involved and the respective rights of the parties (290 U. S. *supra*, at p. 94):

> "The bonds have no general lien upon the lands in the district and save through the assessment no special lien on any tract";

but in saying that this Court was not discussing any general rule at law, but was simply reciting the Idaho statutes and their meaning as construed by the Idaho Supreme Court in *New First National Bank* vs. *Weiser*, 30 Idaho, 15, 22; 166 Pac. 213.

has been denied to a defendant, a part of whose lands, constituting, as here, a portion of an integrated single property system, including a contractual right as an integral part of the system, has been taken and the contractual right thereby destroyed.

C. In the *Omnia* case (*Omnia Commercial Co.* vs. *United States,* 261 U. S. 502), cited in this Court's opinion in the *Mullen Benevolent Corporation* case *supra* (290 U. S. p. 95), and now relied upon by the Respondent here (*Brief,* p. 10), it was expressly recognized that such a contract right is "property" within the meaning of the Fifth Amendment (at p. 508)[9]; and in that case in affirming the judgment of the Court of Claims denying relief to the *Omnia Company* upon its action against the United States for the consequential damages suffered by it because of the United States having taken over the plant of the Allegheny Steel Company and thus rendered it impossible for that company to carry out its contract with the Omnia Company for the delivery of a large quantity of steel plate to it, this Court, nevertheless recognizing as stated above that the contract was "property" for which "if taken for public use" the Government would be liable, and denying relief to the Omnia Company only because of the consequential nature of its damages and because there was no direct taking of any property from that company, *expressly distinguished* that case (261 U. S., *supra,* at p. 513), and that line of cases where there is no actual direct taking of any physical property, from *Monongahela Navigation Co.* vs. *United States,* 148 U. S. 312 [and the other cases in the line upon which we are relying here],[10] where there is an actual direct taking of some physical property which constituted a part of an integrated

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[9] Citing *Long Island Water Supply Co.* vs. *Brooklyn,* 166 U. S. 685, 690; *Cincinnati* vs. *Louisville & Nashville R. R. Co.* 223 U. S. 390, 400.

[10] Particularly *United States* vs. *Grizzard, supra,* 219 U. S. 180, 183-184; United States vs. C. B. & Q. R. Co. 82 F (2d) 131, 134-137; United States vs. C. B. & Q. R. Co.

whole of which the contractual right likewise constituted an integral part,—as is the case here. This Court said in the *Omnia* case [at p. 513, *supra*]:

> "There is nothing in *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, or in the other cases cited by appellant, which in any way conflicts with what we have said.
>
> "In the *Monongahela* Case the property which was taken was a lock and dam, built by the company, pursuant to the invitation of the United States and the State of Pennsylvania, the latter, in consideration, giving the company a franchise to exact tolls. The franchise, therefore, was not merely a contract in respect of the property taken, but was an integral part of it, and this Court (p. 329) said:
>
> > 'So, before this property can be taken away from its owners, the whole value must be paid; and the value depends largely upon the productiveness of the property, the franchise to take tolls.'
>
> "The lock and dam constituted, in effect, a going concern, whose value was of course affected by what it would produce."

D. In other words, in the *Omnia* case, the *Monongahela* case was distinguished from that case on the very ground that the *Monongahela* case was of the same class of cases as is the present case here at bar; that is to say that in the *Monongahela* case the "franchise",—the contractual right to continue to collect the tolls, was,—like the contractual right and duty of the Insular Government to continue to collect the assessments in the present case for the common benefit alike of all of the landowners in the irrigation districts and of the bondholders, to pay off the bonds and con-

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90 F (2d) 161, 168; *United States* vs. *Wheeler Township*, 66 F (2d) 977, 984-985; *Town of Bedford* vs. *United States*, 23 F (2d) 453, 454-457; as well as *United States* vs. *Miller*, 317 U. S. 369, 376; *United States* vs. *Welch*, 217 U. S. 333, and the other authorities cited in our original Petition and Supporting Brief (pp. 16-17, 23-24, 27 *et seq.*).

tinue the upkeep and maintenance of the whole integrated irrigation system,—a contractual obligation which "*was not merely a contract in respect of* the property taken, *but was an integral part of it*"; and,—as this Court there in the *Omnia* case as above quoted said of the lock and dam with its concomitant contractual franchise in the *Monongahela* case,—

> "constituted, in effect, a going concern, whose value was of course affected by what it would produce."

E. The same distinction between the two lines of cases was also impliedly recognized again in the recent *Powelson* case (*United States ex rel. Tennessee Valley Authority* vs. *W. V. N. Powelson*, No. 3 at the October, 1942, Term of this Court, decided May 17, 1943; at p. 11 of the Opinion).

F. Nor is this a case of a merely inchoate project or of a franchise revocable at the election of the local State [Territorial] authorities, as in the *Powelson* case, or in the earlier case of *Sears* vs. *City of Akron*, 246 U. S. 242, cited in the *Powelson* Opinion.

G. *Nor is this a case of the destruction of a mere privilege or business opportunity*, such as the privilege or opportunity of a telephone company to sell its telephone service to subscribers within its area, as in *Deepe* vs. *United States*, 103 Colo. 294, 86 Pac. (2d) 242, relied upon here by the District Court (R. 49), and likewise by the Respondent now (*Brief*, p. 12); and the other like cases cited by Respondent. (*Joslin Co.* vs. *Providence*, 262 U. S. 668, 675-676; *Mitchell* vs. *United States*, 267 U. S. 341, 345).

A subscriber to a telephone company, for example, is not bound to continue to take the service. He may discontinue his subscription on reasonable notice at any time he sees fit and for any reason,—because of change in his own business, moving his residence, or for any other reason, or for no reason at all, without being liable in damages to the telephone company for the discontinuance. And so likewise, if by condemning the property of a single subscriber, —or of a large number of subscribers—the Government

takes away or injures the telephone company's business opportunity in its area, *there is no destruction of any legal right* of the company, but only of its business opportunity; although that opportunity may have been given in part by the holding of a public franchise. *Such a franchise, giving only a business opportunity* within a specified area, for example, *is clearly a wholly different thing from a contractual franchise* like the right to take tolls for a specified period to amortize the cost of the construction of a bridge (or until the cost is amortized) at a specified rate; or, as in the present case, a contractual right and duty to amortize the cost of construction and provide for the upkeep and operation of the irrigation system.

VI.

No double compensation is being asked by The People of Puerto Rico (Point XII of our original Supporting Brief).

A. Respondent makes no attempt whatever to answer what we said under this point (*Supporting Brief*, pp. 46-49).

Respondent contents itself with merely quoting (*Brief*, p. 14) *the District Court's unsupported observation* in its opinion (R. 50) that:

> "What claimant is asking is that it be paid the fair value of that part of its distribution system located on the land taken, and that it be paid also the cost of constructing another distribution system in a different land area. It is not entitled to both."

B. Specifically, Respondent makes no attempt whatever to reply to what we said in our Supporting Brief with reference to that *a priori* conclusion of the District Court, in that,—aside from all other objections to it,—(*Supporting Brief*, pp. 48-49) it fails to bear in mind (1) that the costs of building a new distribution system today on the same area of land would necessarily be very considerably higher than twelve years ago in the early days of the financial depression, and (2) that the topography of no two tracts of similar acreage can possibly be the same, so that the engi-

neering problem of building a water distribution system on another tract is by no means the same as the problem of building the system on the tract taken in these condemnation proceedings; and that therefore, as we said in our original Supporting Brief (p. 49), and now again respectfully submit:

> "The District Court should therefore have been willing to hear evidence upon it in support of the insular government's contention; and should not have disposed of it summarily by *a priori* reasoning, as it did in the paragraph of its opinion above quoted (R. 50, *supra*)."

C. *The detailed engineering estimates* of the cost of building a countervailing system upon an available area of land of similar acreage, upon which the amount of petitioner's claim for damages was calculated, were ready for presentation to the District Court; and should have been received in evidence and considered by it. It was clearly error to refuse to do so and to jump to the conclusion now relied on by Respondents, above quoted, upon the District Court's own unsupported *a priori* reasoning, without the benefit of inquiry into the actual facts.

VII.

Measure of Damages

A. Respondent makes no reply to what we said under this heading. (Point XIII, *Supporting Brief*, pp. 49-50).

B. As we there said ("D", p. 50), the method of calculating the damages may be on either one of three bases, one of which is the cost of building a countervailing distribution system on an equivalent acreage, as was suggested to the District Court [and which that Court so summarily rejected on its *a priori* reasoning adverted to in the preceding paragraph (*ante*, pp. 15-16)].

C. That method of calculating the damages is supported by the decisions, among others, in the cases in the Seventh and Eighth Circuits,—as well as in the First Circuit itself in the *Bedford* case,—cited and quoted in our original Peti-

tion and Supporting Brief,—the two *Chicago Burlington & Quincy Railroad* cases, and the *Wheeler Township, and Town of Bedford* cases.[11]

In the *Chicago Burlington & Quincy* cases the amount of the damages seems to have been already ascertained and definitely fixed at the time of the hearings in the District Courts, by the work of changing the railroad tracks having already been done, so that the cost was definitely known. But in the *Wheeler Township* and in the *Town of Bedford* cases, the new highways had not yet been constructed, and the damages allowed in each of those cases were fixed upon engineer's calculations of the estimated costs of building them,—just like the estimated costs here of building the countervailing water distribution system on an equivalent acreage of irrigable land.

CONCLUSION

For the reasons stated in the Petition and the Supporting Brief, and above, the Writ of Certiorari should issue; the judgments of the Circuit Court of Appeals and of the District Court should be reversed; and this case should be remanded to the District Court for further proceedings.

Respectfully submitted,

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Of Counsel.

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[11] United States v. C. B. & Q. R. Co. 82 F (2d) 131, 134-137; United States vs. C. B. & Q. R. Co. 90 F (2d) 161, 168; United States vs. Wheeler Township 66 F (2d) 977, 984-985; and Town of Bedford vs. United States, 23 F (2d) 453, 454-457. [For our comments upon these cases see original Petition pp. 16-17, and Supporting Brief, pp. 27-34].